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TRANSACTIONS OF THE

# COMMONWEALTH CLUB
## OF CALIFORNIA

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VOL. I ~~81305~~ SAN FRANCISCO, NOV. 15, 1903 No. 1

# The Commonwealth Club of California

## A Brief Statement Regarding Its Origin, Purposes and History.

As the result of several conferences extending over most of the year 1902, about a dozen gentlemen reached the conclusion to attempt the organization of a Club, whose object should be the performance of useful social service in the State of California. As evidence of such intention the following paper was prepared and signed by about twenty-five persons.

It is proposed to organize a Club of not less than forty members whose object shall be as follows:

1. To dine together monthly, for the purposes of discussing, upon authentic data submitted, projects or proposals of current public interest, particularly those involving the expenditure of public funds, and reaching business-like conclusions upon the facts as they may appear.

2. To influence public opinion, in all proper ways, in accordance with the conclusions thus reached after due investigation.

3. To establish a Club House in the country, where members and their families can have proper accommodations, and which shall be a civic center during a portion of each summer for the more complete discussion of subjects germane to the Club's objects.

It is believed that the ordinary expenses of the proposed Club can be met by dues of $12.00 per annum.

At a meeting of a few of these gentlemen held on February 3, 1903, a paper was read by Edward F. Adams outlining more in detail the proper work of such a Club as it appeared to him, which is printed herewith. After some discussion it was resolved "to now favor a temporary organization of a Club on the general lines indicated in the paper." Judge Wm. P. Lawlor was thereupon chosen Temporary President and Edward F. Adams Temporary Secretary. For convenience the temporary name of the "Agora," or "Market Place" Club was adopted. It was agreed that the members of the Club should dine together monthly on the second Wednesday of each month, the ordinary business of the Club to be transacted at that time, with papers and discussions after dinner.

On Wednesday, May 13, 1903, the constitution of the Club was adopted, the name changed to the "Commonwealth Club of California" and organization begun by the election of H. Weinstock, of Sacramento, as President.

At the meeting of June 10, 1903, President Weinstock announced his appointments as follows: Vice-President, Edward F. Adams; Secretary, Dr. E. C.

Moore; Treasurer, John P. Young; Governors, Geo. W. Dickie, R. P. Jennings and C. H. Bentley. Owing to frequent absences from the city, Secretary Moore was subsequently compelled to resign and was succeeded by Dr. Frederic Burk. All officers serve to the end of the calendar year.

At the meeting of August 12, 1903, the Club approved the recommendation of the Governors that its members should organize themselves for work into "sections" to be created as need for them appeared, and the President thereupon appointed the following Chairmen of Sections:

Section of Commercial Interests, Geo. W Dickie; Section of Public Education, President Benjamin Ide Wheeler; Section of Public Finance, Professor A. C. Miller; Section of Social Welfare, E. A. Wolcott. Members of the Club may attach themselves to any section, or if they choose, to more than one.

Since the organization of the Club papers have been read and discussed upon the following subjects: "The Hindrances to the Success of California Industries and How They May be Removed," Geo. W. Dickie; "The Libraries of San Francisco," by Geo. T. Clark and F. J. Teggart, Librarians of the Public and Mechanics' Institute Libraries, respectively. (These were not written papers.) "Municipal Bookkeeping," John P. Young; "Irrigation and Forestry," by Governor Geo. C. Pardee and Professor W. H. Dudley. All these papers and subjects have been referred to the appropriate sections to be prepared for further discussion, and, if desired, action by the Club.

Among the other subjects proposed and referred to sections for preparation are: "The Revenue System of California," "The Civil Service," "Home Rule for Cities," "Bonding Cities for Public Improvements," "The Penology of California," "Marriage and Divorce," "What Should Be Done for the Preservation and Renewal of California Forests?" "To What Extent Ought the Initiative and Referendum be Applied in Our Government?" "What Principles Should be Included in an Irrigation Law for California?" "What are the Possibilities for the Production of Raw Silk in California?" and a question whose exact title failed to get into the record, concerning the proper method of control and management of the Water Front of San Francisco. Topics, in fact, are suggested much faster than the Club can adequately deal with them.

The Club has voted to hold a spring or summer public conference in 1904, at Skyland, near Wrights, in the Santa Cruz mountains.

The Club needs a large membership of public-spirited citizens, partly for the work which they may do in the sections, or elsewhere, and partly for the revenue supplied by the dues. Very few subjects can be properly investigated without the expenditure of some money. The administrative expenses of the Club are trifling but revenue is required both for investigation and publicity. Receipts from initiation fees are put aside for providing the Club with a permanent headquarters in city or country or both.

## Officers and Members.

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|---|---|
| President, | H. WEINSTOCK |
| Vice-President, | EDWARD F. ADAMS |
| Secretary, | FREDERICK BURK |
| Treasurer, | JOHN P. YOUNG |
| Governors, | GEORGE W. DICKIE<br>R. P. JENNNINGS<br>C. H. BENTLEY |

These, with the President, Vice-President, Secretary and Treasurer, constitute the Board of Governors.

The membership of the Club was as follows on November 1, 1903:

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| ADAMS, EDWARD F. | BENTLEY, C. H. | DENICKE, E. A. |
| ANGELL, FRANK | CUSHING, OSCAR | FORD, TIREY L. |
| ANDERSON, ALDEN | DICKIE, GEORGE W. | FRANKENHEIMER, J. B. |
| AIKEN, CHARLES S. | DENMAN, WILLIAM | FREEMAN, A. G. |
| BURK, FREDERICK | De VECCHI, PAOLO | GREGORY, WARREN |
| BENTLEY, R. I. | DAVIS, ANDREW M. | GRUNSKY, C. E. |

PRESIDENT - - EDWARD F. ADAMS
VICE-PRES. - BEVERLY L. HODCHEAD
SECRETARY - - T. D. BOARDMAN
TREASURER - - - - JOHN P. YOUNG
CHAIRMAN EXEC. COM. - E. W. WILSON
EXECUTIVE SECRETARY - E. A. WALCOTT

# COMMONWEALTH CLUB OF CALIFORNIA

153 KEARNY STREET, SAN FRANCISCO
TELEPHONE KEARNY 1310

GOVERNORS:
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O. K. CUSHING
I. N. HIBBERD
CHARLES D. MARX
GEORGE W. MERRITT
E. W. WILSON
JOHN P. YOUNG

COMMITTEES AND CHAIRMEN

AGRICULTURE
FRANK V. CORNISH

CITY CHARTERS
H. WEINSTOCK

CIVIL PROCEDURE
LESTER H. JACOBS

CIVIL SERVICE
E. R. ZION

CRIMINAL PROCEDURE
RANDOLPH V. WHITING

CONSERVATION
FRANK ADAMS

EDUCATION
DAVID P. BARROWS

HOUSING LAWS
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A. H. MOWBRAY

STATE HIGHWAYS
OTTO VON GELDERN

TRAINING SCHOOL FOR GIRLS
J. C. ASTREDO

TAXATION
JOHN GINTY

Nov. 8, 1912.

Robt. Rea, Acting Librarian,
San Francisco Public Library,
Hayes & Franklin Streets,
San Francisco, Calif.

Dear Sir:-

In reply to yours of November 7th in regard to supplying a set of Volume I, we are enclosing herewith a copy of No. 5, and of No. 7, of the Transactions of that volume.

We regret that we are not able to supply other copies as nearly all the copies of the volume were destroyed in the conflagration of 1906.

Trusting that these will be of service to you, I remain,

Very truly yours,

E. A. Walcott,
Executive Secretary.

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DENMAN, WILLIAM
De VECCHI, PAOLO
DAVIS, ANDREW M.

FORD, TIREY L.
FRANKENHEIMER, J. I
FREEMAN, A. G.
GREGORY, WARREN
GRUNSKY, C. E.

HARRISON, WM. GREER
JENNINGS, RUFUS P.
JOHNSON, H. W.
KEELER, CHARLES
LAWLER, W. P.
MILLER, A. C.
McNAUGHT, JOHN
McADIE, A. G.
MARX, C. D.
MOORE, E. C.
McCORMICK, E. O.
MARKS, S. M.
MAGUIRE, JAMES G.
MURDOCK, CHARLES A.
MEYER, F. H.
MOSES, BERNARD
MANSON, MARSDEN
McCLYMONDS, J. W.
PARDEE, GEORGE C.
PHELAN, JAMES D.
PELTIER, GEORGE W.
PORTER, ROBERT
PLEHN, C. C.
QUINN, JOHN E.
RIORDAN, D. M.
RAMM, CHARLES
RICKARD, THOMAS
REED, CHAS. WESLEY
SBARBORO, ANDREA
THOMAS, WILLIAM
WHEELER, BENJAMIN I.
WICKSON, E. J.
WALCOTT, E. A.
WHEELER, WM. R.
WEINSTOCK, H.
WING, C. B.
YOUNG, JOHN P.

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## A Public Service Club.

The following paper by Edward F. Adams was read at the first meeting of the Club at which a temporary organization was effected:

Human experience shows that men become interested in movements in the ratio of the effort which they expend in behalf of them and the thought which they contribute to them. However strongly we may approve another person's idea, we are not likely to particularly bother ourselves to push it along. That is the fellow's job who thought of it. Any successful Club will, therefore, be the composite result of the thought and effort of many people. If it represents only one man's thought it will not be successful. If, therefore, I give you my conception of what might be called a "public service Club," it is with the distinct understanding that if it should not, in due course of time, receive material modification from the thought of others, I should expect no good to come of it. Most of the things I know have been learned by trying to do the impossible. I have learned in this way that it is useless to try to push a project which can succeed only by the united effort of many, but which no one really cares much about but yourself, and also that no one really cares much about any object of public utility until he has contributed something material to its accomplishment. Nevertheless, when a body of men are united in a general desire for the accomplishment of a purpose which may exist rather vaguely in their minds it is helpful if some one of the number will put into a rather definite form his individual conception of what is wanted and how to do it, to serve as a basis for discussion and such modification as may come from the application of the common wisdom to the problem.

All recognize that California suffers greatly because the best elements of its population fail to co-operate for the common good as effectively as the bad elements co-operate for evil purposes. This is partly because those of patriotic impulses do not know each other, partly because they are widely separated by our great areas, partly because they distrust each other—that is, men who are really moved by the best motives are believed by others, equally good, to be inspired only by selfishness. Nobody seems willing to believe good of another if evil can possibly be imputed. Nobody can propose any change for the better without antagonizing those who profit by abuses. These proceed promptly to lie about the reformer, and contemptible as they are known to be, they are usually believed. Discussion promptly shifts from the merits of the proposed measure to the demerits of its unfortunate projector. Before the exact degree of his depravity is ascertained the reform is forgotten.

My conception of a public service Club is a body whose members shall have entire confidence in each other's regard for the public welfare, however diverse their views of the best methods of obtaining it—their views, in fact, being as diverse as possible in order that no point of view may be missed. The nucleus of the Club should be men of decided competence, and it should make no effort to become large until its character and traditions are well established. Ultimately I should hope for a large membership widely distributed over the State. I am sure that those present will understand that I am not looking for a body of men who are supposed to be, or pretend to be, or are, in fact, any better than the majority of good citizens. We all have our good sides and our bad sides, our moments of noble aspiration and our hours of sinful performance. I don't expect Mr. Thomas to stop organizing trusts, Mr. Ford to refuse to advise a corporation with watered stock, Mr. McNab to stop purifying Democratic politics, or Mr. Young to quit editing a Republican paper.

I expect to see no perfect men in the Club except old fellows like myself, who, having passed the age when they can sin with much satisfaction to themselves or inconvenience to society, are ripe for repentance and reform. What I do expect is that when we are together we shall practice toward each other absolute intellectual honesty in the perfect assurance that what any man may say in the privacy of the Club will never be made use of to his injury or discredit.

This introduces the social element and requires that admission to the Club be not thrown open to the public, but confined to those found acceptable after the scrutiny usually given to candidates for admission to social Clubs.

What such a Club should do would be for its members to determine in the light of experience. It is certain, as I think, that it could not undertake the part of a propagandist without being assailed as all others are assailed who attempt actual useful accomplishment in California, and probably with the usual result. But we began with the assumption that good men disagree. We know that when good men disagree as to courses of action it is almost always because they disagree as to facts. The logical conclusion seems to be that the most essential function of a public service Club at the present time is the ascertainment of the essential facts concerning important measures, as found by competent investigators and agreed to by men of differing views within the Club, or when exact facts cannot be ascertained, impartial statements of the claims, authorities and arguments on both sides—in either case without comment, and in the briefest form. The monthly discussions in the Club would be preceded by such investigations, so that the members could discuss in the light of the facts and not of vain imaginings. The effect of such discussions among such a body of men as it is hoped to bring into this Club would be far reaching, even if the data were never made public, a matter which would be determined by the Club. Some members of the Club would be able and willing to undertake such investigations, others could not. I am satisfied that with the aid of the University authorities a great amount of this work might be done by advanced students as part of their seminary work. Some things which the public would like to know students could not find out. They could ascertain, for example, the exact alleged duty of every employe of the San Francisco Harbor Commission or the San Francisco Board of Health, but they would not, perhaps, be able to learn at whose request and for what reason the particular incumbents were appointed. The public would be glad to know both. Engineering students would find a profitable subject for a thesis in preparing a clear statement of the different plans for the control of the Sacramento river, and the reclamation of adjoining lands. Students in law or economics could ascertain what legal and moral responsibility was assumed by the State in accepting overflowed lands, and the exact terms of the agreements by which the State, in disposing of them, attempted, if it did attempt, to transfer those responsibilities. Students in ethics might endeavor to discover where the moral responsibility for reclaiming lands now rests. Some practical fellow might ascertain the names of the persons who would derive most immediate benefit should the State make the improvements entirely at its own cost. A person with an inquiring turn of mind might speculate as to whether, if the State is to reclaim the lands, it would not have been wiser to do so before virtually giving them away. Some philosopher might draw a useful moral from the entire transaction. I mention this partly to illustrate the nature of the questions which the Club might profitably take up, but more particularly to indicate the way in which, with profit to all concerned, a prodigious amount of work could be done in collaboration with the University which would be impossible for busy men, unless abundantly endowed with funds available to pay for intelligent assistance.

I regard a country home, where summer gatherings can be held, as essential for various reasons, and it must be so located that men cannot easily go and come from their business in the city every day. I have no faith in such work wholly done at odd hours. More good can be accomplished in a three days' session by men whose minds for the time being are concentrated on a subject than by a year of monthly meetings, useful and interesting as they are. Such meetings held in the country attract more attention, are more widely advertised, have more influence. It is my observation, however, that you get little attendance at summer meetings unless combined with recreation. The possession of property by a Club is an indication of solidity. A country home of considerable extent, with comfortable hotel accommodations at hand and a hall for meetings, with a clubhouse, and so situated that members can buy pieces of land and build cottages, would do as much as any other thing to make the Club influential. The particular place which I should like to see the Club buy is situated in the midst of the largest contiguous body of tillable land in the Santa Cruz Mountains. It

is thickly settled, offers the most desirable change of climate for residents of the bay cities within a reasonable distance, is a fairly well-known summer resort; is now within four and one-half hours from this city; will within a few years be within three hours' ride; will always attract to summer meetings a large number of the general public, and is within the means of a small Club. I should expect the Club within a few years to get its money back by selling villa sites to its members. My idea of a summer meeting for useful accomplishment is four hours of work and twenty hours of rest and recreation each day. I had three years' experience in promoting summer meetings at that place, and it was satisfactory.

Most work for the public good is done by men of small means. It seems to be essential that a Club intending to combine recreative with useful public service should be economical. A dollar a month dues, and even a $1.50 dinner, costs $30 a year, and would exclude many useful workers. I think we should have simple, short dinners, get promptly to work, and go home in good season. In the country we should so arrange that the meetings, of course, open to the public, could be attended with small expense by those who so desired, while those who insist on luxury could get it by paying for it. I think the active members of the Club should own and manage its property. I think that, in time, there should be associate members, having the privileges of the Club but paying only for what they consume. This would let in men of influence, willing to lend their names, and men—especially young men—willing to work but unable to pay. By joining the two classes as "associate members" the self-respect of the poor men would not be impaired. It is my impression that the ownership of so beautiful a piece of property as that which it has been proposed to buy would be a constant temptation to expense to which, in the end, the Club would yield. But for the present I think we should be content as it is. Many whom we should wish to see active members are already interested in other country places. This place would be gradually developed and beautified by the younger generation. It would be attractive to all of us, and would be more and more resorted to by our families during the summer months or by families of our friends, to whom we should rent the cottages. Adjoining this property is a half burnt over and generally misused forest tract of about sixty acres which I should like to see the Club acquire, and, in collaboration with the University, proceed to reforest as an object lesson.

This, in brief, is an outline of my conception of a Public Service Club—for which some ingenious member would devise an appropriate name. It would evidently be quite easy to close with a very pretty rhetorical effect, well calculated to create passing enthusiasm and a good hearty round of applause. But in speaking of this proposed Club I have always sought to avoid the emotional. What is more desirable, I think, is fixed resolution. The good elements which compose the vast majority of our population lack only good leadership to unite them for good purposes. I propose that we lead. I have no fear of lack of following so long as it is self-evident that we only propose to find truth and turn it loose in the world. I do not doubt that members of the Club and those whom we should influence would become propagandists, but the only duty which I propose for the Club as such is that of a definite analysis of public questions in such forms as to expose humbug if it exists and can be exposed by a statement of facts without comment. I believe that California needs such work—needs some one to prepare the pleadings for cases at the bar of public opinion. If there be any who say patriotism is dead, I do not agree with them. If there be any who say it is useless to fight evil I do not agree with them. If there be any who say there is no fun in fighting evil I do not agree with them. It is as much fun to hunt demagogues as to hunt coyotes. More. There is no better combination of business with pleasure. Besides it is in the direct line of civic duty. And I believe that the time is now ripe for permanent organization, upon an important scale, for the concentration of the influence of the best citizenship of California, not for the purpose of promoting this or that or any particular reform, but for promoting the consideration and discussion of all important measures upon their real merits and contributing what we can to such discussion. I think the time is ripe, for the reason that when I have presented the project in that light, with some appearance of resolute intent to promote it, I have invariably been met with a most hearty expression of interest and usually with a prompt agreement to come in and help. This convinces me that if each one of us now here approaches his friends in the same way we shall fill up our Club at once, and that the Club working together on those lines can become a powerful factor in our civilization. As things stand now, the universities are virtually our only source of influence in public affairs in whose honesty the general public has confidence. As the public conscience of California, the universi-

ties are overworked. I think we can help them, and that they will welcome our help and will render to us such assistance as they properly can. Of course, the universities can assume ethical motives which it would be unbecoming in us to attribute to ourselves, but economic considerations will reach some whose consciences are seared as with a hot iron, and while ethics should by no means be barred in our Club, I imagine that we should modestly profess to oppose evil practices, not because they are wicked but because they don't pay; and that we object to backbiting, quarrels, waste of public money, disregard of law, ineffective government, corruption in public affairs, neglect of our natural advantages, action without information, and the constant jangle which we are in, because it keeps down the price of real estate, prevents the profitable employment of capital, interferes with the promotion of new enterprises, reduces the advertising in public journals, hinders the sale of merchandise, restricts the business of transportation, keeps deserving lawyers out of employment, gives California a bad name in the world, neutralizes the efforts to bring in desirable population, and causes a constant, general and enormous misdirection and waste of energy.

These are the considerations which seem to me to render our project worthy of serious consideration and effective aid by the best men in California. I propose that we now here resolve to go ahead and do the work. Including myself, there are now over a dozen gentlemen who have signified in a general way their willingness to engage in the enterprise, without definitely committing themselves to it. All, if I remember correctly, have come in at my personal invitation. If an unknown and unimportant person like myself can induce such gentlemen as you to seriously consider engaging in such an enterprise, what could not be accomplished if each of you should do even no more than I have done? What, I think, we should do to-night is this:

Decide, if we conclude to so decide, to organize the Club.

Select a temporary president and secretary to serve until a permanent organization can be made with at least forty members.

Appoint a temporary membership committee, to which names shall be submitted of persons to be invited to become charter members, and who shall, before approval, satisfy themselves that their election will introduce no element socially inharmonious. The committee, if it think best, to name a place and hour where they, or some of them, will lunch on a certain day in each week to consult upon new names.

Appoint a finance and business committee, which shall mature financial plans to be submitted to the Club and conduct all business negotiations.

Request the temporary president, in consultation with such members as he may meet, to prepare a form of permanent organization.

Resolve to dine together regularly each month hereafter.

Select, or appoint some committee to select, some subject of importance to be considered by the Club at the first meeting not found to be fully occupied, and designate the committee of two to prepare the statement of facts to be the basis of the discussion.

In other words, get to work and learn to do by doing.

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## Relations of Employer and Employed.

At the June meeting, 1903, Mr. George W. Dickie* read the following paper:

As the subject before the Club to-night has been suggested by myself, I cannot complain about being selected to open up at least one of its many subdivisions. I have selected the most difficult, as it is the most formidable obstacle to the development of California industries, as the subject that I am sure that you expect me to bring before you. I will therefore endeavor to present my thoughts as far as I can do so in words, under the title of "The possibility of ending the hostile attitude that the employed and employer maintain toward each other." This subject is undoubtedly in the minds of more thinking people to-day than any other subject bearing upon the material prosperity of the

*Mr. Dickie is General Manager of the Union Iron Works, San Francisco.

country. The wise men connected with our industrial enterprises are beginning to feel as if the foundations upon which they have been building can no longer be depended upon, and that unless something can be done to give stability to the structure. It may be wrecked in the next industrial storm.

Subjects of this character are usually discussed by those who view the struggle going on all over the world of industry between the employer classes and the employed masses from the outside, and, not being within the range of the fighting weapons of either party, they can safely speculate on their own pet methods of ending the strife, but for one who is within easy range of the guns of both parties to attempt handling a subject of such a highly explosive character, even in the quiet seclusion of the Commonwealth Club, is, I am afraid, a rather dangerous proceeding, and I shall be fortunate indeed, if I escape drawing the fire of both parties (if they happen to be represented here) upon my own defenseless head. My long experience with the employer on the one hand, and the employed in various trades on the other hand, has led me to think very deeply on the great problems involved in any attempt at a righteous solution of the questions ever which so much bitterness has sprung up between those whose interests should be common. The very closeness of the relationship between the parties to this struggle gives it something of the character of a family feud, the most bitter of all human fights. I have referred to a righteous solution of the question between the employer and employed, and I wish at the outset to impress this on the minds of those who desire to interest themselves in the problems involved, for, unless these questions are settled righteously they will forever remain unsolved, and the settlement must be right in the eyes of the employer, and right also in the eyes of the employed.

When either party has been compelled through force of circumstances to accept a settlement that he considers unjust, the matter is not settled, but only continued, the condition being that of an armed truce, which lasts only until the aggrieved party thinks he is strong enough to again open hostilities. To the social reformer, to the student of social economics, and to Clubs of the character that the Commonwealth Club aspires to, this condition of almost constant industrial struggle is a fruitful field of study, and much has been written, and much has been said in the effort to instruct the two great classes that are thus at war with each other. All are agreed on one point, that is, the necessity for peace in order to secure prosperity, and to this end much advice has been given to both parties.

The employer is instructed in his relationship to those he employs and in regard to the position he occupies in the general economy of things. The industrial philosopher tells him that all his means for carrying on the industry in which he has embarked has come from labor, in fact, is the undivided surplus from past labor that has accidentally come into his possession, and bearing in mind that fact he can afford to deal liberally with his workmen, even if he does not quite see the justice of their demands. He is often asked to put himself in their place and try to look on the question at issue as they do. These advisors forget that if the employer was in the place of the employed he would act just exactly as they do. In fact the employer that fights the hardest against any demand on the part of his men is usually the man who does not require to look very far back to find himself among the employed and demanding from his employer the very things his men are now demanding.

There is also plenty of advice ready for the working men. Their condition now is compared with what it once was, and their condition here is compared with the working man's condition in other countries. They are also comforted with the information that their condition is steadily improving, that the next generation of working men will occupy a higher place among their fellow men, that with this prospect they should be content and that the demands they are continually making only retard the general progress of all men to a better condition; to all of which good advice they pay no attention, but stake their future progress, if they think of the future at all, on the power of trades unions, to force the employers to grant them the present good thing they want to get.

At present the working man is convinced that his salvation lies in the trades unions, and he is willing to be handled in mass by these institutions, his own individuality being entirely lost in the process. This disappearance of the working man as a distinct personality might be quite an interesting study for some of the members of this Club, as I think it quite possible to trace out the methods by which he has ultimately lost himself in the aggregate of some trades union. Such a study would reveal the methods by which he has reached the conclusion that now regulates his conduct, that whoever employs him is his enemy,

and that his ambition must be to injure his employer's business, wherever and whenever the union to which he has sworn allegiance considers such a course necessary for the good of the cause it represents, and in his eagerness to inflict all the injury possible on the business in which he earns his living, he loses sight of one inevitable result that no trades union can save him from—that all the injury inflicted on his employer during his fight for the demands of his union, becomes a first mortgage on his future labor, which must be liquidated to the last cent by himself and his fellow workmen, there being no other way by which the damage done can be repaired.

It is very difficult to get working men to understand that all damage done to the industry in which they work, by a dispute between them and their employers, must inevitably be made good out of their labor in the future. The financial loss must be charged by the employer directly to the labor costs of future work which leaves less available for wages. Or, if the struggle is of such a character as to bring upon him financial ruin, then the damage is beyond repair and the employees have succeeded in placing themselves among the permanently unemployed.

Besides the direct damage resulting from the almost constant struggle between the men that have work to be done and the men that want to do it, there is the indirect and constant injury resulting from the attitude of the two parties toward each other. This attitude of hostility has removed from the mind of the workman that interest he used to take in his work, as to the quality of it, and whether the quantity produced made it safe for his employer to continue to keep him employed. When large numbers of men are employed now, few of them even concern themselves as to whether the work done during the day is really worth, and can be sold for more than the wages they are paid for doing it. If the trades unions would insist on their numbers doing each day an amount of work that would make the employer safe in carrying out his contract obligations, they would thereby pave the way to a better understanding between the employer and the members of their unions.

In order that there may be a just relationship between the employer and the employed, there must be a just relationship between the work done by the employed and the money paid for doing it by the employer.

How much a man should work, and how much he should be compensated for the work he does, is the great question around which all the misunderstandings have arisen, resulting in the strife that continually tend to retard our industrial progress.

The great majority of mankind must work in order to live, and that condition is not likely to change, nor would it be desirable that it should change; and while men keep protesting against this condition of life as an imposition, it is in the main, not so much against the fact as the manner in which the burden is laid upon them. And general bitterness of feeling against the employer displayed by the employed springs (whether real or fancied) from a sense of unjust treatment.

In the removal of this feeling lies the solution of the problem known as the labor question, and it is worth the effort of a good many lives to solve it, even for one section of this great country. This feeling is deep rooted and much time and great patience will be needed to reach the desired result. Much has been expected out of what is known as the humanities in industrial establishments but the solution will not come through that channel. The working man, if he be of the right sort, resents being catered to, and, no matter how honest the motive of his employer may be in his efforts to make the surroundings of those who work with him pleasant and cheerful, the men look upon such efforts simply as a sort of sugar coating for a very bitter pill. Industrial establishments should be made comfortable, and even attractive as far as the nature of the operations carried on within them permit, and wise laws should be enacted in every State to secure proper surroundings, and, comfortable, safe shelter, suited to the proper protection of every industry. But this, even in its most perfect development cannot have any effect on the solution of this problem.

In what direction, then, must we look for the true balance between these antagonistic forces by which a righteous equilibrium can be maintained and a lasting peace secured?

I find that there are generally two great questions or issues between the employer and the employed, over which all their battles are fought, questions

that people generally have got so linked together that it is hard work to pull them apart, and yet, as regards work to be done, they really have no very intimate connection—Time and Money.

The workman with a trades union to support him wants to give small time and get in return large money. The employer on the other hand, wants to give small money and get in return large time; and between these questions of time and money, the real thing that the workman can do, and that his employer wants done, is generally lost sight of.

If an hour of time by any workman employed at a given trade always produced the same industrial result, then the questions of time and money could be properly treated together; but any one who has had to deal with them knows very well that the one is no just measure for the other.

The majority of employers contend that the labor of a workman is a commodity that can be bought and sold by measure like any other marketable article, and that the value of it is to be expressed in so much per minute of time. In fact, this is the method that usually prevails in buying and selling labor, and, wherever workmen are organized into trades unions, this is the method they strive to make universal. Any system that makes the compensation depend entirely on the result produced is not favored by the trades union, and the reason given is one that always appeals to the workman, especially when presented in the manner so well known to the clever leader.

Compensation according to the time spent within the works, irrespective of what the time spent has resulted in producing, is claimed by the trades union orator to be in the line of bringing about the universal brotherhood of man, and as they put it, the strong helping the weak, which means the willing hands doing the work, the unwilling, loafing and both being paid alike, for, says the trades union orator, "A man must be able to live and support those dependent upon him," even if not able, or better still, not willing to do much work.

The working man who is in the market with his skilled labor for sale is not seeking a purchaser for any tangible amount of work, but what he wants to dispose of is a certain number of hours each day at so much each; and during these hours the purchaser is to coax the article he desires to purchase out of him if he can, which is often quite impossible. In fact, all that the working man sells is an opportunity. Nothing else that I know of in all the range of bargaining is vended on such conditions.

The desire of the purchaser for something more tangible than a bare opportunity, has led him to propose piece work instead of time work, which is a more just way of paying for work, and in some trades where the work can be portioned out to the men, this method has become the rule.

But the workmen, especially where they are organized into unions, generally protest against this method of paying for their work, claiming that in all its applications it is simply task work, having always behind it a certain rate of wages, kept steadily in view by the employer, who, as soon as any workman, by superior skill or extra diligence manages to earn more than he thinks his wages should be, begins to cut down the price per piece, without regard to what the market price allows him to pay for the work done. There is, unfortunately, much truth in this argument of the workman against piece work. The employer is not always just in dealing with the workman in regard to the value of the work that is to be done. This arises from the idea of considering time and money together.

This wrong idea is in the minds of both parties. Some definite rate of wages per hour or day, that from the workman's point of view he should never fail to reach, no matter how small the day's result may be, and from his employer's point of view he should never by any exertion on his part be allowed to exceed no matter how large the result might be.

I have for many years been convinced that neither time work nor piece work as we understand these terms, should be the basis for settlement between the employer and the employed, and so long as these methods with all their opportunities for injustice on both sides prevail, we must go on fighting as we are now doing, each party keenly watching for a chance to outflank the other.

I have faith enough in human nature as we find it in the great body of working men and as we find it in those who purchase their labor, to believe that it is possible and if honestly set about, quite practicable to separate the labor

cost from the material, and all other costs in our industrial products, and for the labor part of the product of any industrial establishment, enter into contract with the men, as a whole, who are to perform the labor.

No contract can be properly entered into by any industrial establishment without a careful estimate being made of all the component parts that enter into and in the aggregate form the cost of the completed work to be contracted for.

The estimator, if his work is to be a safe guide for the firm or company that he represents, must have correct information as to the amount of, and the cost of, all materials to be used in carrying out any proposed contract. He must know what proportion of the general expenses of the establishment must be charged to that estimate; then the proper or relative value of the proposed contract to the capital of the company, and the length of time to complete the work, will enable him to determine the profit that should result; these items, if a competent man, he can determine accurately; but the largest of all the items he has to deal with, that of the cost of labor to convert the crude materials into the thing contracted for, he can only approximate from past experience. What its ultimate cost will be depends largely upon the relationship between his company and the men who are to do the work. The variations in cost of labor on the same amount of work done at different times, resulting from different men and different conditions, is often sufficient to wipe out several times over the estimated profit on a contract.

In large contracts it is usual to make a bargain for the cost of all materials before work begins, and it seems to me that it might be possible for the employer to bargain with his workmen as a whole for the labor on any contract. The one party only needs confidence in the justice of the other to make such a method perfectly practicable. Much of my time for the past thirty years has been devoted to estimating on the cost of work. This estimating involves labor cost amounting to several millions of dollars in wages each year, and in every estimate the cost of labor is a distinct and independent factor, and sound judgment, coupled with long experience, must be exercised in arriving at the labor costs. In estimates involving many trades and large numbers of men, even under ordinary peaceful conditions, large allowances must be made for unwilling hands that wait for time to move on to pay day, and who have no interest in what has been produced for the pay they receive. But in times of industrial strife no one can even approximate what the cost of labor on a given contract may be, the question then being, Can work be done at all, at any cost? My experience has led me to the conclusion that a desire to do the very best they could by all hands every day, would, in establishments that pay their men for the time they are at work, practically double the labor result. And with such a possible margin to work on, the employer and his men might both make a good thing out of it, if each had faith enough in the other to do his best for the good of both.

I have carefully studied several methods in use at industrial establishments, both in this country and in Europe, having for their object the compensation of the workmen in accordance with the work produced, without the objectionable features of piece work. Piece work and most of the premium plans, deals with the product of the individual man, and besides raising comparisons amongst the men themselves, which are odious here as elsewhere, can only be applied to such parts of the work that can readily be separated from the general work being done, and in large establishments covers only a small portion of the work. My experience, combined with a careful study of this subject, has forced me to the conclusion that the only way to get the best result out of all the men employed in a large industrial establishment, is to combine them all by mutual interest in bringing about the best possible industrial result. The working man must first be made to understand that the establishment in which he works must be run at a profit or it will soon cease to run.

Many workmen gathering their information from the wild statements made by labor leaders and a certain class of newspapers, have very exaggerated notions of the profits made in the industries. I had occasion some time ago to speak to a number of workmen bent on trying to force very hard conditions on their employers, and the question of profits was brought up during the discussion, showing that their ideas of what was possible for their employers to do and yet have something left, were quite remarkable. Nor could any impression be made upon them by the statement that in eighteen years their employers had paid out

in wages twenty-eight million dollars, and during the same time the stockholders had been paid one million three hundred thousand dollars in profits, or less than five per cent on the wages paid. This would have given these men an average of one and one-half cents per hour more wages, and the stockholders nothing. Yet these same men, if they all worked their best, might have readily doubled the result, and thereby increased materially both pay and profit.

The main thing that both employer and employed must accept as the foundation for any scheme that is to permanently bring about proper and natural relations between them, is justice. Without that nothing can be done, and the one must have perfect confidence in the justice of the other. If this attitude toward each other can be assumed and maintained, all other difficulties can be overcome.

Most of my thinking on this problem has been in connection with industries of a similar character to that in which I am engaged, and I will endeavor to state, as far as I can in words, how I would propose to carry out such a scheme.

I have stated that in all estimates, labor is treated as an independent factor, and it is the most difficult of all the factors entering into an estimate to determine. What it should be to meet the market value of the work produced is within the power of the experienced estimator to decide; but what it will be, depends entirely upon how the men that are to do it feel about it.

I have found out a curious fact about this matter of labor values: That all the intelligent workmen whom I consult with about it, set a much lower value on the labor required to produce a given result than my experience tells me is necessary. They instinctively think of what a man could do if he tried, while I have been forced to figure on what he generally does, and thus, what under ordinary circumstances an unwilling man can be persuaded to do, has become the measure of the value of labor in the estimates that are regularly made for contract work. And that item of labor in the estimates I make runs from 40 to 60 per cent of the total amount. Very few workmen believe this; in fact, I have found them generally under the impression that the profit was from 40 to 60 per cent.

The usual proportion in estimates I make is, say,
Labor, 40 per cent,
Material, 40 per cent,
General expenses, 12 per cent,
Possible profit, 8 per cent,

and in most industries the employer would be very pleased indeed to be sure of 8 per cent on the work done.

Suppose then, that an employer agreed with all the men he employed, the amount that set aside for labor in any estimate should be accepted by the men employed as a whole, as the compensation they should receive for performing all the labor required to complete the work represented by that estimate. All the men employed, in that case, would have to be represented by a committee of themselves, say one from each department of the works, who would go over the estimate of labor with the manager and accept on behalf of the men they represent. They might have to depend much on the manager's experience to begin with, but experience would come to them in time, as it came to him, and the employer, as at present, would ultimately have to stand the chance of possible loss, but that chance would be very much less than it is at present, as the prospective gain by the workmen would be an incentive to every one to do his best. Under such an arrangement, I would propose to engage all the men just as they are employed under the present system, the foreman rating every man at what he considers him worth per day, with this difference: That each man's rating should be posted up in the department in which he works, and his fellow-workmen through their committee should have the right to have his rate reduced if they found that the work he turned out was not equal to his rating. All wages would be paid as at present according to the rating, and the wages paid on each job or contract should be charged against the amount accepted by the men on such job or contract.

As each job or contract was finished, the unexpended amount available for labor on that particular job or contract, if any, would then be credited to the labor surplus account. If on any job or contract the wages paid should be more than the amount accepted for labor, the difference would be charged to the labor surplus account. At the end of each year or half year, the amount that had ac-

cumulated in the labor surplus account, would be available as a dividend on labor, and whatever percentage it formed of the total amount paid for labor during the year would be the per cent each man would receive on the amount he had earned during the year.

This enables each workman to participate in the profit of the labor part on all work done in the establishment, whether he was a long time or a short time employed during the year, and without any reference to the particular job he may have worked on. So that no matter what he may be doing or in what capacity he works, how he does that work will either swell or diminish the general dividend, and every man will see to it that his fellow workman does not reduce his dividend, if any instruction on his part will prevent it.

The great advantage of such a method applied to the labor part of an industrial establishment, is its inherent justice, both to the employer and to the men employed. A fixed value for a given amount of work to be done, that makes estimating safe, and compensation to all the men according to the amount of work they do. The men being directly interested in the work, will naturally do their best, and will see to it that their fellow workmen do the same, and only those who have experienced it know the difference between willing and unwilling workers. And this condition is as old as the necessity of work among men. The old Prophet gave it as his experience nearly three thousand years ago that the work on building the walls progressed rapidly "because the people had a mind to work;" but when the workmen have a mind to loaf, no skill on the part of the management can avert the inevitable result.

I believe that the time has come when labor must be dealt with, not as a marketable article that can be bought by any time measuring arrangement, but as a living thing that can be contracted with; that has feelings and hopes, and a something before it to strive for, or it will not strive at all, and whose feelings, hopes and aspirations, must be taken into account in all plans and estimates of cost. I believe that the difference in result between the work of earnest workmen trying to do the best that is in them, and whose recompense is measured by what they accomplish, and the indifferent labor that is forced out of a man by constant watching and urging during a given number of hours, is so great that only those who have to deal with the problem daily can comprehend its magnitude.

I fully understand that such a system of compensation to workmen as I have outlined, presents difficulties of a special character in every kind of business. Probably the trade unions would use their power over the men to prevent it being carried out successfully as with such a system in successful and general operation, the trades union would not be able to hold its members together as it could not offer them any advantages that they did not already possess. The trades union also claims that the more work a man does the less men will be employed. This fallacy seems to be the most difficult mistake to combat in dealing with the trades unions. If it were true, that, if a man turns out more work per day than he used to do he is thereby forcing some other man to go without work, then after such a strike as we had in certain trades in this city a year ago, when the men employed did no work at all for ten months, there should have been more men employed after the strike to do the work left undone by the strikers, but this is not the case, and never has been so in all the history of industrial struggles. The more work turned out per man in any industry, the more men will there be employed in such industry.

I believe that some such plan as I propose will be ultimately accepted by both employer and employed, as the only solution of the differences between them. Courage and honesty, combined with the right kind of skill on the part of those managing large industrial concerns, would, if patiently applied, result in such benefits to workmen and to those with whom they work, as would save many an industry, which, under the present unjust methods of dealing with labor problems, have nothing before them but impending ruin.

The present condition that prevails amongst the employers and the employed is so unsatisfactory, often manifesting itself in mutual distrust and hatred of each other, and these conditions are so dangerous to the best interests of society, that some remedy must surely be found before the twentieth century has advanced very far, if our boasted civilization is all that we hope and trust it is. The best intellects of our day have been directed to the solution of the labor problem, and practical men will have to find a better way to deal with labor than by opposing force to force.

Those who are between the upper and the nether millstone in this process of grinding out an industrial product for the market, between the capitalist and the workman, feel the difficulties of this problem most. They see daily how little is wrung out of unwilling men for the price paid, and how ineffectual the forcing process is.

I might be asked why it is that some such method as I propose has not been hitherto attempted. To such a question I might reply that there are several noted examples in various industries of such an arrangement between the employers and the employed. I visited a concern in England some three years ago, which has had such a system in successful operation for many years and there I found both employers and employed well satisfied with the results. The business was that of general engineering.

Employers would, I think, generally be willing to try such a plan, or any modification of it that would suit their business, but trade unionism seems to stand in the way. The trades union upholds the doctrine that to it belongs the trade at which its members work; that they can only work at it as the union may decide, that the employer has nothing to say in the matter, his only function being to find the money to pay the members of the union for honoring him with their presence in his work so many hours a day. I know it will be denied that this is the position aimed at by the union, but in reality it is that, and even more, I know that it is no unusual thing for the foreman or leading hands who seek to promote the interests of their employers to receive letters telling them that if they persist in doing certain things they will have to render an account to the union to which they are compelled to belong, and there are numerous instances in which foremen who have given orders to the workmen during the day, have had to appear before these very same workmen at a meeting of the union in the evening, and receive judgment at their hands for something or other of which the men have disapproved.

Is it any wonder that under such conditions the employer cannot get into any intimate relations with the men that work with him?

Much is said and written in these times of the right that men have to form and support trade unions. Few employers deny that right. Many things, however, are right in themselves, but are not expedient when applied to every day work; and then, no union can be right if the objects sought to be accomplished by the men uniting would be wrong for the non-union individual.

I was looking the other day at the rules bearing date of 1901, of a union whose members went on strike two years ago in this city to enforce some of them.

Rule 22, Admission of Apprentices, Section 2:

> "No one shall be acknowledged by this Society as having a claim on the trade who does not commence working at the same at the age of sixteen years, and continue at it for the space of five years, so as to enable him to become an efficient workman, and unless he is such he shall not be admitted a member of the Society."

This reads very well until one begins to realize its scope. The trade is claimed to be owned by the union, and no one is to be acknowledged as having any claim on the trade unless he begins to make his claim at sixteen years of age. The absolute right to work at a trade is here denied to the man, no matter how competent he may be, who has not come to his knowledge of that trade in the manner prescribed by the union.

Section 5:

> "The number of apprentices must not exceed one to every five journeymen working in any shop or yard. This is to apply to slack times as well as busy times. The average number of journeymen working at the trade for any employer during the year shall be a guide for regulating the number of apprentices employed."

How could any industry grow under such a restriction? Apart altogether from the right of any union to deny the opportunity of learning a trade to whoever desires it, there is the impossibility of growth under such a rule. In order to keep the working force from diminishing under the operation of such a rule, every one who served an apprenticeship would have to continue working as a

journeyman twenty-five years, or thirty years in all, and in this very trade in which an attempt is made to thus restrict its growth, this country expects to double the number employed every two years for the next ten years.

Rule 43, Members Acting Contrary to Trade Interest, Section 1:

> "Any member of this Society, either angle-iron smith, plater, riveter, caulker, molder-up, or sheet-iron worker, instructing any one not connected with our Society (except legal apprentices) by allowing him to practice with his tools, or otherwise instructing him in other branches of the trade, shall, on proof thereof, be fined for the first offence $2.50; for the second, $5.00, and for the third to be expelled from the Society."

It is surprising that employers do not readily submit to the dictation of a union established to enforce such rules and attempting even to give them the force of legal enactments, as instance the words "except legal apprentices," that is, apprentices under the laws of their union.

Can a business prosper with the workmen pledged to prevent their fellow-workmen from acquiring the necessary knowledge to do the work effectively? I might quote more of the rules of this union forbidding any of the employers' machines being operated except by members of the union, and under conditions dictated by the union; how piece work is to be discouraged, and only undertaken after consultation with the union and at such prices as the union may fix.

Some way will have to be found to avoid the impossible conditions that are continually set up by the trade unions, and that way will require to lead to a condition of willingness on the part of workmen to do the very best they can themselves, and encourage all their fellow-workmen to do their best to promote the general good of the establishment in which they earn their living. By so doing, security would be insured to the trade, and their recompense would be what justly belongs to the men who do the work.

I have thought of many ways to reach the result aimed at, but any way that I have endeavored to work out, that did not provide for every man's compensation being according to the amount of work done, has led me into entanglemeuts quite as bad as those that now prevail.

In every industrial product, where material is worked up into marketable form, a certain part of the cost of doing so is available for compensation to the men whose work has changed the materials into the desired shape, and that part justly belongs to the workmen. By present methods this part, and often very much more, is divided among the men whose time is charged to the work, according to the amount of time consumed, instead of according to the amount of work done. In other words, the cost of work depends upon the condition of willingness or unwillingness of the workers, whereas the cost of the work should be definite and known amount, and the workman's share of that amount should depend upon his condition of willingness or unwillingness to work.

I trust that I have, in presenting this subject to the Commonwealth Club, been able to make my meaning clear to its members. I have tried to do so. The subject is a difficult one, and will require wiser men than the speaker to propose and carry out successfully the plan that will bring harmony between the employer and the employed.

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# UNIONISM.

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## From the Standpoint of Unionism.

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Mr. Edward F. Adams* read the following paper at the July, 1903, meeting:

To the Commonwealth Club:

For reasons stated to the club, I propose for the time being to put myself in the attitude of the union workman and from that standpoint to present such

*In this paper it will of course be remembered that Mr. Adams was simply speaking as he thought a union man would speak, and not necessarily presenting his own views.

objections to Mr. Dickie's paper as occur to me, and to present the theory and policy of union labor as forcibly as I can.

As a self-appointed champion of union labor, permit me to say that I recognize as fully as Mr. Dickie the importance of industrial peace and also that none have so much to gain by it as the man who works with his hands. I also recognize the perfect fairness of Mr. Dickie's statement of the case and perceive that he comprehends the position and reasonings of the union workman as perfectly as any labor leader in the world. We both recognize that the sentiment of the unions is not to interest themselves for their employers as they would for themselves, or that each workman should always do his best. We both recognize that some employers will endeavor to so fix the price of piece work that the best workmen only can earn a living wage, and I doubt whether he would disagree with me in the contention which I make that the number of such employers is so great that any general introduction of payment by piece in industries where that is possible would intensify rather than mitigate the ill-feeling existing between employer and employed. We each understand the other's position so well, in fact, that I see no possible chance of any explanations or concessions which would enable us to come to an agreement. We are hopelessly divided, for we seek different ends. He seeks the success of individual establishments in which just employers and faithful and interested employees shall work for the largest possible profit, to be equitably divided among all engaged in production, giving to each his due. I seek the welfare of the entire laboring class, effective and ineffective and regardless of the establishment, or even the industry with which its members may be connected. As a man I prefer my personal advantage. As a tradesman I prefer the prosperity of my trade, but as an average man and as an average tradesman, I recognize that my best chance lies in maintaining a solid pbalanx of all who work to sustain collective bargaining of all who work in each industry with all who employ in that industry. As an average man I wish to escape the competition of the specially skilled man just as the ill-equipped and poorly-capitalized modern shop dreads the competition of the powerful trust. Mr. Dickie proposes that in each establishment the managers and workmen shall agree upon the gross sum to be allowed for labor on each job, regardless of time taken and subject each man's wages and each man's effort to the scrutiny of his fellows, thus virtually fixing each workman's status and earnings by the public opinion of the shop. Assuming the possibility of adjusting such a plan to the practical exigencies of all large industries, I should oppose it with all my power because destructive of the only force which has made it possible for me to discuss my status with Mr. Dickie at all. Such a man as Mr. Dickie working with such a body of men as he might gather about him would make it almost impossible for the rest of us to live at all. Competition between workmen was deadly enough before unions were formed, but it was nothing compared with that which would follow the gathering of the strongest, most intelligent and most faithful workmen around the wisest, most skillful and most energetic employers. Those establishments would set the pace as the specially skilled workmen sets it on piece work and the rest of us could not keep it up. While all might do well in such times as these, when the pinch came and work was scarce it would all go to those highly organized and effective establishments, and those not engaged there would starve. Mr. Dickie's plan is good for the most capable and industrious—so is all competition—but it is death to the weaker. In no body of men working together for a common end will the individuals be found to possess equal effectiveness. It is an essential feature of fraternal competition that the strong shall in some measure support the weak. In fraternal life insurance the young are loaded with some extra premiums in order that the burden of the old may be less. If the young men will not stand that, fraternal insurance will soon cease to exist. In an association of tradesmen—the retail butchers of this city, for example—the alert and skillful salesman who knows how to increase trade to his profit by shading prices upon occasion, must forbear to employ tbat art. If he does employ it the association will go to pieces. In the organization of an industrial trust the more opulent must provide capital for the weaker. If they do not the trust cannot be formed. In organizing a railroad pool the strong lines must allow to the weaker a differential wbich will be more than they could otherwise earn. In a co-operative store the abler and more far-sighted members must give, with slight remuneration or none, the benefit of their skill and industry to their less capable associates. The salary of Mr. Mitchell, when head of the English Co-Operative Wholesale Society—then, and perhaps still, the largest mercantile concern in the world—was about $1,000 a year. If such men will not forbear to exert their talents for their own exclusive benefit, co-operative mer-

cantile business cannot continue. So it is with unionism. If the best workmen will not forbear to exert their strength and skill to the utmost in competition with their fellow-workmen, labor unionism is doomed. It is in this spirit, and not in a spirit of antagonism to employers, that such restrictions on output as exist are imposed. It is the cornerstone of unionism, and when it is removed, the whole edifice will crumble. Where, as Mr. Dickie proposes, a selected body of men in one establishment are pitted against their brother workmen in all other establishments, and urged by all the influence of their environment to do their best, the cornerstone of unionism is wrenched from its bed and ruin must follow.

Doubtless it is true that seldom, and perhaps never, are even a majority of the workmen in any establishment moved by the feelings which I have endeavored to describe. Human nature is what it is. Mankind, in the mass, is inert. It is moved by energetic leadership, and it is by loyalty to leaders, and by that only, that workmen have made that progress in well being which Mr. Dickie so fully recognizes. But some men—Napoleon, for example—have great capacity for leadership, with no moral character to guide them to good ends.

There have been such leaders among workmen and they have done harm, which we regret. We cannot help it. There will be more such. They do not last long, nor do they now attain more than local leadership. There is no war which does not produce some bad generals and many more bad colonels and captains. But in process of time the bad generals are weeded out and the bad colonels and captains reduced in number. In the contest of labor with its environment, that has been the experience. But our leaders are getting wisdom and their followers confidence. And having, as all concede, gained much, shall we now abandon the doctrines and the methods whereby we have made these gains, and revert to the old conditions of competition, intensified by such organization as Mr. Dickie proposes? The workingmen do not think so. We regret the constant friction and trouble, but was there ever progress without contest? When the Christian sings

Sure I must fight if I would reign,
Increase my courage, Lord;

Does he not thereby give expression to a universal truth? Would employers have enabled their workmen to raise their standard of life if they could have helped it? Would they suffer them to maintain their present standard if they could help it? I do not mean here and there an employer, but employers as a class—and in the end the most just and well-disposed employer can do little better than his most avaricious competitor, and continue to do business at all. The plan of Mr. Dickie will not do because it regards only the welfare of particular establishments, whereas labor unionism must consider the welfare of all labor, or die.

It is the desire of the business man to do business quickly by the selection of the fittest instruments, regardless of the fate of the less fit. He believes, as Mr. Dickie contends, that thereby will come the greatest good to the greatest number—that the more work there is done the more work there will be to do and to sustain that belief he points to the wonderful progress achieved under competition and to the unquestioned fact that all improvements which increase the output of a given quantity of human labor make more work for producers of raw material, more commodities to be produced,transported, worked over into new commodities, wholesaled, retailed and consumed, inevitably, in the end, requiring more workers in the production of that commodity itself in whose production the cycle began with the discharge of unnecessary employes. All this the business man sees—but he does not see, or seldom sees, in the slums and dark places where they exist, the wrecks of humanity left stranded by the storm of competition. The laboring man sees them. They are by him and with him and of him. Seeing them as he does, feeling for them as he does, being part of them as he often is, he is moved by his very consciousness of kinship to such effort as lies in him whereby he may wrest from the world that which shall give living wage for all who will work and comfortable support for those dependent upon them.

This labor unionism proposes to do. The labor unionist, however, the individual workmen, too often, and probably mostly, thinks only of his class and of himself. He desires that the available work in his trade be apportioned among those now engaged in that trade and that these may be strictly defined, and that

each may contribute his due share for the defense of the whole he demands that all shall be members of the union. As workmen are as selfish as employers, mostly desiring to share the benefit of unionism, without bearing any of the burdens, we are compelled, wherever and whenever we are strong enough to do so, to employ coercion, refusing to work with non-union men or to handle material prepared by them. We do this because we must do it or fail to accomplish the objects of unionism. We fix a minimum wage for our services upon precisely the same basis upon which employers base the value of their services—what we think the traffic will bear. We intend to get all we can, just as they do. In fixing that minimum wage, we cannot hold the best men in the trade if we fix it below what they can obtain in competition, because the union wage is always the "going wage," and it is hard for any man to get more. This, so long as unions control the situation, raises the wages of all and is the gain of unionism. As employers are at liberty to select within union ranks the result is that so far as employers know the men, the best are selected. When part only are needed, the others are helped by "out-of-work" benefits. That, again, is an end of unionism accomplished. The stronger help the weaker—very often contrary to the real wish of the stronger. As unionism contemplates employing the power of all labor to promote the welfare of the individual laborer, the federated trades act as a unit in support of the just cause of any of their members, the standard of justice being the judgment of the Council of the Federation. Hence we have, when necessary, the sympathetic strike. In other words, we bring, as we must, whatever power is available, and necessary, to win a fight which we believe to be just, just as employers would do if their social effectiveness were equal to ours, which it would be if the penalty of selfishness were as severe with them as with the workmen. They could beat us if they were as united as we, because they do not starve when work stops, while we do. The one danger to unionism is the solidarity of employers. The one safeguard of unionism is forbearance from pressing the employers until, like ourselves, they are united by external pressure against the wish of the majority uniting.

Federated labor assumes the right to distribute labor among classes of laborers without consultation with employers. This is necessary because unionism, being responsible for the support of laborers, must needs decide who shall work and who shall be idle, when some must be idle. Hence our rule that no man shall do the work of another's trade. We guarantee to the men of each union, so far as we can, protection from the competition of men not of the union of his craft, whether members of some other union or not. This is a necessity for us, if we expect to maintain our federation, and ordinarily does the employer no harm. It is not possible to exercise discretion in enforcement where enforcement is demanded by the injured craft. Its enforcement on trivial occasions is sometimes the cause of friction and hardships which we regret, but do not yet see how to avoid.

In its earlier struggles unionism sometimes gains as the result of physical violence. This, however, is only when public opinion is strongly with union men. Unionism condemns violence, but cannot always restrain unionists. More often violence, even in just cause, injures the cause of labor. Hence wise union leaders dread violence and prevent it if they can. Leaders are not always wise, but experience is teaching wisdom to all unionists. The stronger unionism becomes the more peaceful are its triumphs. Their ultimate extent will be determined by the force which determines the extent of employers' profits—general willingness or refusal of the public to buy what is offered for sale at the price fixed by the vendors.

These, roughly, are the fundamental doctrines which we unionists profess, and whose logical outcome is in the practices which are the cause of so much friction. There could be no such revolution of theory and practice without friction. When our movement began the employer made all regulations respecting employment without consulting labor, and enforced them under penalty of discharge and possible starvation. Now labor makes the regulations and enforces them by the same penalty. The employer fixes the wages for all on the basis of what the most needy competent workman would expect. Now we fix them on the basis of what the most independent workman is willing to accept under existing conditions of what the public is able or willing to pay for the product. The principles which govern us are precisely those which have governed and still govern employers—the determination to get all we can. When employers have had power they have often been overbearing and tyrannical. When unionism has had the power, it also has been guilty of excess. Men being what they are,

this is inevitable. But employers also have their rights and their powers. These they will assert and are asserting. Out of the conflict must in the end come equilibrium. Equilibrium could come only by conflict. Except as we establish our status by contending for it, we shall have no status except that fixed by the employer, who will fix it on the basis fixed by the competition of workmen among themselves. Therefore we must contend, and being in the conflict we must strive, for that which is our right, which is that which we can get. Our only hope is in maintaining the solidarity of labor by rules which are deemed equitable by working men themselves as between working men. Any proposal which weakens the union tie involves danger to the cause which unionism seeks. The proposal of Mr. Dickie is to set the workmen of one shop in strong competition with the workmen of all other shops. Unionism seeks to abolish all competition between workmen. To accept what Mr. Dickie proposes would be to accept the defeat of unionism, and that, please God, we will never do.

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## Publicity in Municipal Affairs.

The following paper was read by Mr. John P. Young, at the September, 1903, meeting of the club:

It was Voltaire who said, "One great use of words is to hide our thoughts." An equally cynical philosopher familiar with the intracacies of modern business has said, "Bookkeeping is a science devised to conceal peculation." Both judgments are the fruit of close observation. It is indisputable that the fluent talker can deliver himself of a great quantity of words without his listeners learning what he is thinking of, or of even being assured that he thinks at all; and it is quite certain that most modern systems of bookkeeping do not reveal "crooked" practices until some overt act of the perpetrator makes wise those who have been depending upon elaborate methods of accounting to protect them from depredation.

It is doubtless impossible to devise a system of accounting which will afford perfect security against fraud. The skilful manipulator can always find ways of covering up his tracks so long as his integrity is not suspected, and even when it is he is not entirely at loss for means to throw dust in the eyes of experts. The latter are compelled to take much of what they find in the books they examine on trust, and if the entries conform to the requirements of a nearly exact science they must be satisfied. It would be an interminable job to go behind the returns to ascertain the truth or falsity of every entry, or to ascertain whether everything that should go on the books has been entered. Hence in the nature of things, experting in most cases is a perfunctory work and merely establishes that accounts have or have not been kept according to rule.

With a full knowledge of the difficulties which hedge about the subject of bookkeeping in the private walks of life, where we assume perfection exists when we are making comparisons with public performances, I am not inclined to severely criticize the methods adopted by American municipalities. Investigation will disclose that the systems of bookkeeping in vogue are fully as excellent as those pursued in private establishments, and that the accountants are usually as competent as those outside of City Halls. As a rule there is no fault to be found with the appearance of the books kept under municipal auspices. They are well written and come nearer balancing than those of many institutions whose affairs are managed with rigorous exactitude.

Nevertheless, it is undeniable that there is an uneasy feeling in the minds of thinking men in American communities that the vast sums annually drawn from the taxpayer for the support of municipal governments is not all properly expended, and it is accompanied by a conviction that it is impossible to so completely demonstrate the fact that the servants of the people would be deterred from improper practices. If this were not true, our business men would hardly consent to sit by quietly and see their fellow-citizens robbed. If the books could be relied upon to disclose rascality, our taxpayers would undoubtedly exercise their right to have them experted; but they know that such performances are vain and as of little use as an average Grand Jury's report.

It is highly desirable that this sense of insecurity be removed, for it is, in this community, at least, the most formidable obstacle to the adoption of a comprehensive system of municipal betterment. It is not improbable, as some contend, that the public vastly overrate the extent of peculiation and wasteful expenditure, but there is no assurance that the money raised by taxation is not consumed in the manner suggested by the bitterest opponents of democracy, who declare that the extravagance and misappropriation which characterize our municipal affairs afford signal evidence of the incapacity of the people to govern themselves.

There is no doubt that many of those who denounce American methods of administration have failed to give the subject the attention it deserves. They take foreign cities for their standards and assume that we should obtain similar results, but until recently nearly every municipality in the United States conducted its affairs on a basis which absolutely precluded the idea of comprehensive improvements. The sums appropriated for municipal purposes seemed large to the taxpayer, but they barely sufficed to pay the vast army of officials and clerks employed to do our administrative work, and the too common assumption that the major part of the money raised by taxation is wasted or stolen, naturally prevailed because there was nothing to show for the money.

It was finally realized in some American cities—notably New York—that the popular criticism and discontent could be allayed by doing something else than spending money on salaries. Accordingly a liberal—perhaps it would be nearer the truth to say an extravagant—allowance was made for the cost of administration, after which provision was made for improvements. The plan has succeeded admirably. The metropolis is now expending over a hundred millions a year, but it is constantly adding new and good streets and keeps them in so much better condition than formerly that there is little dissatisfaction expressed. A comparison of the items of expenditure under the so-called reform administrations will show that New York has not cut down the number of its public servants or their compensation. On the contrary, it has made large increases in almost every department. But rapid commercial expansion and the visible evidences of something doing have reduced criticism to a minimum, and the average Gothamite is beginning to believe that his city is well administered.

There is a disposition in San Francisco to imitate this course. Supervisors, prominent business men and newspapers are found assenting to the proposition that public affairs cannot be economically administered. They declare that wastefulness and peculation must be allowed for in our calculations, otherwise we shall lag in the march of improvement. One gentleman, a member of the Board of Supervisors, and a leading merchant of this city, has declared in an open meeting of the body to which he belongs that we need not mind the misapplication of hundreds of thousands of dollars provided we get something.

Now the desirability of improving the city is indisputable and, perhaps, it is true, as some seem to assume, that improvements cannot be purchased at too great a cost. But the question arises: Is it necessary for all the people to stand and deliver to procure them? A man need not be a dreamer of dreams to answer it negatively. He does not even need to have an abounding confidence in the possibility of developing a high degree of public integrity. Indeed, he may have as bad an opinion of the general run of mankind, and especially of that part of it which seeks office, as the Supervisor quoted and still hold to the view that official morality may be compelled.

But how to compel it is what the average good citizen desires to know; or at least he does about the time he is obliged to step up to the Captain's office and pay his tax bill, although he thinks about the matter in a very perfunctory manner after he has performed that little sacrifice. The remainder of the year he leaves the business of threshing out the subject to the Commonwealth Club and the other cranks who write for the reviews and the newspapers, who, as a rule, reach the conclusion that a reform can be effected only by electing good men to office, but invariably fail to tell us how to persuade good men to accept municipal offices.

It seems reasonable to assume after so many repeated failures to secure good men to manage our municipal affairs that the conditions are unfavorable to such a result, and that we might as well make up our minds that we must deal with the material that offers itself and make the best of it. There is one advan-

tage in reaching such a conclusion. It will leave us under no illusions. We shall fear the worst, and under the inspiration of apprehension we may take precautions which may, perhaps, ameliorate our woes. For sometimes men who are not naturally good come pretty near being so if they are menaced by the danger of being found out.

Some of us are very fond of talking about the necessity of public affairs being conducted on a business-like basis, but there are others who openly declare that loot and waste are inseparable accompaniments of municipal management. These latter scoff at the idea of a city being governed as economically as a private concern; but they fail to give any good reason for their want of faith. They simply plant themselves on the proposition that the thing can't be done, and the community knowing that it never is done accepts the decision as final.

The true reason why such ill results are achieved in the management of municipal affairs is on the surface and may be learned by any one who wishes to know the facts. We fail because we do not try to succeed. We talk about applying the same rules to the administration of public affairs that obtain in private life, but we never attempt to put into practice the leading principle which governs the conduct of all business outside of City Halls and State Capitols—Distrust.

Distrust is the key that opens the lock of success in modern business. The concern which proceeds on the assumption that trust pays better than mistrust is sure to "bust." This does not imply that there are not many honest men in whom confidence can be reposed, for there are plenty such—more perhaps than there would be if the affairs of the world were carried on in absolute disregard of the fact that we are all sinful creatures and prone to err. But I have noticed that the honest man is usually the careful fellow who hedges about with prickly precautions the path of rectitude so that he may not stray from it.

In short, the only solution of our municipal difficulties is a resort to government by cash register. We must imitate the example of our street railroad corporations and require our city officials to take the public into their confidence by "ringing up" whenever they accept a fee or receive money from the taxpayer. The cash register is a very ingenious device. Few people realize the fact that through its agency they are made assistant bookkeepers to the concerns using them, but that is really the case. Every time a conductor "rings up" a fare, or a clerk registers a receipt of cash, he calls upon all within hearing to expert his work by noting that he has made a proper entry.

Perhaps it is not practicable to provide a cash register, or to hang a bell punch about the neck of every municipal receiver or disburser of moneys, but there are modes of making public their transactions which ought to prove equally effective. It is singular they are not resorted to, for in theory we are constantly struggling for a method of checking which will restrain the predatory instincts of those who manage the affairs of municipalities. The elaborate system of auditing adopted by most cities, and the multiplication of books and clerks to write them up, are in response to a popular demand that tab be kept on the servants of the people. But their defect lies in the fact that they are checks which do not check, because there is no way of making use of them except at a greater cost than the peculation which they are designed to prevent involves.

A little over a quarter of a century ago one of our national campaigns revolved about "turning the rascals out." The fellows who had been kept away from the crib a long while insisted that if the books were overhauled an awful state of affairs would be disclosed. The charge made a great impression, and "turn the rascals out" proved to be a very taking slogan, although it did not win out at first. Subsequently, however, it did. The fellows who had vociferously demanded a look at the books had their desire. If they found any rescalities they failed to take the nation into their confidence. No specific instances of theft or types of thievery were exposed and things went on in the same old way.

The failure to find evidence of rascality was not due to lack of desire. When the outs got in they set vigorously to work to uncover frauds; but the books were all right. They balanced perfectly. There was no reason why they should not do so, because there was an army of clerks to balance them. And this army was needed. At least so one of the foremost business men of the

time assumed, as I have reason to know, for the discovery of his attitude taught a young and ambitious reporter that men who go out after wool sometimes get shorn themselves. This reporter, whose name shall be kept a profound secret had by chance learned that the senior member of the well-known firm of Drexel & Co. had expressed the opinion that the United States Treasury Department employed about three times as many clerks as would be required by a private firm to transact twice the volume of business done by that Government department. Sharpening a sufficient number of pencils, the young man started in quest of an interview. The banker received him, not exactly cordially, but he received him, and asked what he wanted. The icy manner of Mr. Drexel discomposed the young man and he put his inquiry rather crudely. He said: "We have been informed, Mr. Drexel, that you think that the business of the Treasury Department could be done, etc." "So I do," he dryly answered, "and it probably would be if it were not for inquisitive newspapers and stupid politicians who fancy that what they cannot understand is incapable of being understood by men of capacity."

The banker did not deign to explain himself further to the reporter, but later the young man learned from a reliable source that Mr. Drexel entertained the view that the department did a vast quantity of cross-checking which might be readily dispensed with by a private concern managed by men who knew that two and two made four. But he admitted that the great beast of a public, which occasionally insisted upon an investigation, must be provided with endless evidence in black and white, and piles of vouchers and other proofs of the absolute authenticity of every entry made.

Whether Mr. Drexel really thought that the voluminous bookkeeping and elaborate auditing of the Treasury Department amply safeguarded the public interests was not disclosed. But if he did he must have been, considering his opportunities, a remarkably credulous man. Auditing under the most favorable circumstances rarely insures against abuses. Acute business men are so well aware of this fact that in dealing with the expenditures of employes concerning whose actions they can gain no exact knowledge, they invariably seek to eliminate the element of uncertainty by making fixed allowances. Thus the traveling man is put on a per diem for road expenses; if he is not his bill is likely to attain proportions which the most active blue pencil can hardly bring within reasonable limits. With all his highly specialized knowledge acquired by long experience in the management of his own affairs the business man is often conscious that he is overreached by his employes, who sometimes have their own private arrangements with those who furnish supplies. All he can usually do to prevent spoliation is to judiciously employ his knowledge to keep the expense account from mounting too high.

This being the case, it is manifestly absurd to expect that a system of auditing such as that which prevails in this and other American municipalities can prove effective. What it actually results in is an assurance to the public, not always comforting, that the money expended is disbursed in accordance with the forms of law. There is every reason to believe that an auditor, otherwise a most excellent man, would not hesitate to give his approval to a pay roll stuffed with the names of clerks who performed no services, provided the head of the department presumably employing them certified to the correctness of their claims. His scrutiny extends no further than to ascertain whether the number of men having claims are allowed by charter or statute. He does not make it his business to go behind the returns in such cases; nor does he attempt to ascertain whether there has been an overcharge for supplies. He may know that a bill certified to him as correct calls for twice as much as is really owing to the claimant, but if the expenditure has been duly authorized it gets his approval.

That this resume of the performances of our Auditors does not misstate the facts will be inferred from the assertions of one of the experts who recently made a hunt through the books of the County Clerk's office to discover how small a proportion of the fees collected negligent deputies had permitted to find their way into the treasury. This gentleman plainly told the Supervisors that the Auditor does not audit the accounts of the city and that his work is such as any clerk might do. His purpose in making this charge was to convince Supervisors that it would be a good investment to provide the city with a new accounting system at a cost of about $25,000. Presumably it embraces the idea of keeping the accounts of the municipality in such a fashion that a resort to experting will easily disclose a certain character of frauds, if such have been com-

mitted. Doubtless the additional safeguards would have a deterrant effect, but the experience of men in private life teaches that no system of bookkeeping is so perfect that it cannot be beaten. Like the locks which are supposed to defy the efforts of expert burglars, but which open as if by magic when a real artist in the burgling industry tries his hand at them, complicated accounts have their weaknesses, for there is an astonishing quantity of genius which delights in bringing to naught the cleverest schemes of the professional accountants.

Observation has taught bankers who have the custody of money and other valuables that their safety is best assured by publicity. Locks and watchmen are good enough in their way, but it is noteworthy that our safe deposit companies take the precaution to build their vaults in places where they may be seen of all men. By that clever device the community is impressed into service just as it is in the case of the street car corporation, which invites its patrons to help the "spotter" prevent the conductor knocking down more than his share of the fares collected. Why cannot the publicity plan be made to work in the management of municipal affairs? Would not the taxpayer take an active interest in the prevention of municipal corruption if a feasible opportunity to do so was offered to him?

These questions have already been answered in part. The principle that it is wise to let the public know what its municipal masters are doing was acknowledged in the early history of San Francisco by the authorized publication of municipal reports. Until very recently there was an annual setting forth of the doings of the municipality in a book of hundreds of pages, which, however, rarely saw the light until many months after the close of the fiscal year, and when it did its contents were not calculated to enlighten the inquisitive. It is true it gave some information. It told, for instance, how much cash the books showed had been received and expended by the municipality, but it never satisfied the taxpayer's yearning to know whether the report set forth all the facts.

This annual report was not lacking in detail, but it was usually of a kind that did not illuminate the subject. The keenest critic of affairs could not take it up and gather sufficient information from it to form an intelligent opinion as to whether affairs were properly or improperly administered. Without additional data, he could neither indorse nor challenge the accuracy of the presentation. Whoever attacked a San Francisco municipal report with the idea of learning something which those who assisted in its preparation did not design to impart had to retire from the assault and acknowledge himself baffled.

It is debatable whether, under any circumstances, a report of transactions published in many instances from eighteen to twenty months after their occurrence, would serve the useful purpose of discouraging municipal malversation. But, as has already been intimated, there was precious little information about transactions in our municipal reports. There was plenty of fac simile work of bookkeeping tables, but very little of the kind of meat and bones that the expert searches for when he is on a still hunt for evidence of rascality. The latest municipal product of this kind is well worth studying, if for no other purpose than to get a firm grip on the fact that the chief purpose of printing a report must have been to give some publisher a fat job and to convey as little information as possible while pretending to spread the books wide open to the public gaze.

The latest San Francisco municipal report published was that for the fiscal year 1900-1901. It contained 560 pages devoted to the recital of the operations of the various departments and an appendix of 750 pages, making a total of 1,310 pages. The copy examined was bound in full morocco and had the name of the person to whom it was presented stamped upon it in nice gilt letters. It could scarcely be called a fine specimen of bookmaking, but there is every reason to believe that any defects it contained were more than offset by the stiff price charged for its publication.

One of the first things in the report that will attract the attention of the captious critic is the extraordinary waste of space. Taking it from cover to cover, it may be safely asserted that the 1,310 pages occupied might easily have been cut down to half that number without sacrificing plainness of presentation. There are tables containing only a dozen lines so spaced out as to fill a page. The County Clerk's report occupies 17 pages. If they were used with any regard for economy of space they would contain an average of over fifty lines each; but many of these pages contain 12, 19, 26 and 28 lines. There are at least eight of

the seventeen pages which might have been crowded into one had the desire been to simply give information and not print an edition de luxe.

But it is not so much the way the information is presented—although that is not unimportant—as its character that we are interested in as taxpayers. These seventeen pages are taken up about as follows: Two are devoted to giving the number of commitments by the Superior Courts and to telling the nationality of the persons committed. Two are occupied with tables of statistics respecting naturalization. There are a couple of pages of information about the disposal of civil court cases and six of criminal cases. But there is one column only relating to receipts and expenditures and that deals wholly with totals. Nowhere in the report could an inquisitive person find any information that would lead him to suspect that fees were misappropriated; nor is there anything in it from beginning to end which would help one to determine whether the clerks were overworked.

The Assessor's report does not communicate much more. There are thirteen pages, the most of them devoted to a wide-spaced presentation of a very untrustworthy lot of statistics respecting the manufacturing industries of the city. There is no satisfying information regarding the number and occupation of the large army of clerks employed in this department.

The City Attorney takes up seven pages of the report to relate who have asked opinions and how often and how many he has rendered.

The Sheriff occupies fourteen pages, eleven of which are devoted to presenting in tabular form the causes of commitment to the County Jail and the occupations of the persons committed. Only three pages are accorded to a very scanty transcript of the cost of administration in which salaries amounting to $84,125 annually are lumped into one item.

The Coroner's report consumes seven pages. One of these consists of five lines about the religions of suicides. The statement of expenses aggregating $19,155 00 gets exactly seven lines of space. Altogether great ingenuity is displayed by the printer in handling this report, which might easily have been compressed into a single page.

The Board of Fire Commissioners are allotted seventy pages. Thirty pages of the seventy are taken up with wide-spaced tables giving names of employes of engine houses; three pages at the outside would have sufficed if the object was merely to give rank and names. About twenty-three pages are filled with rules and regulations of no interest to the general public, and of no use to the firemen in this place, for they have copies gotten up in better shape available in the engine houses. Two pages suffice to present the financial operations of the department, aggregating $688,718.

The Auditor who does not audit has the biggest call on space. His report occupies 115 pages and deals with disbursements amounting to $5,635,644. There are scores of pages of items of expenditure which give no names and are guiltless of details. Thus we find "Repairs to Vehicles at Almshouse, $718.35." No mention of the number repaired, the persons repairing them or the character of the vehicle. For "wines and liquors, $1,160"; for "fuel, $6,860.85." There are incidentals for the Assessor, $180; for the Civil Service Commission, $135; for the City Attorney, $711. Postage bills of $1,881. For repairs of bituminous streets, $11,793. The Board of Works is charged with rubber boots to the value of $390 and other rubber goods costing $400. And in one item is bunched $12,074.94 for teaming and hauling. These are merely specimen items and are cited only to show how much the Auditor's report leaves to the imagination.

The License Collector, who gathered $555,154, parts with information very reluctantly. He gives the number of persons in a class paying licenses, but furnishes no names.

The Treasurer's report consists of thirty-two pages and is absolutely valueless as a source of information. The appendix is made up of 435 pages of water rate discussion; fifty-four pages concerning the municipalization of the Geary-street street car system; an argument in favor of the acquisition of an electric

lighting plant occupies twenty-five pages, and seventy-five pages are devoted to immortalizing the subscribers to the Volunteer and McKinley monument funds.

The purpose of thus roughly outlining the contents of the 1,310 pages of this report is to emphasize the fact that it certainly does not perform the object for which it was ostensibly published and to show that within the limits of the space occupied by the useless information presented it would be possible to furnish the public an itemized account of every dollar received and expended by the city. Thirteen hundred and ten pages, with all the space properly utilized, would provide for 69,120 lines, and if the report were printed in columnal form double that number. It is reasonable to assume that every transaction involving the expenditure or receipt of cash by the city could be described in 138,240 lines and leave an abundance of space in which to give the public an insight into the work performed by their official servants.

But even if the report were made on these lines it would scarcely effect the object aimed at if its issue were delayed until a year or so after the transactions it professes to narrate had occurred. The cash registers in our cars would not serve their purpose if conductors had the privilege of ringing up the fare at their own convenience. The essence of the system is to "punch in the presence of the passenjaire." If we are to have a municipal report of a really efficacious character it must appear frequently and on sharp time. A weekly bulletin would be just the thing and it should faithfully mirror every transaction, great or small, of the municipality.

That the issuance of such a bulletin is perfectly practicable, and that it could be produced for a sum very little if any greater than it now costs to expert the books of the city, and make public such information as is vouchsafed at present is easily demonstrable. For $200 a week a paper containing 36,000 lines wide enough to reproduce bookkeeping items could be printed and circulated. It costs over $9,000 to publish the belated edition de luxe report I have described, and the bills for experting a single city department already amount to $6,000, and there is now a suggestion that an appropriation of $25,000 per annum for experting would be money in the taxpayer's pocket.

If such a bulletin were published weekly it would reduce the opportunities for peculation and loafing to a minimum and it would make favoritism impossible. If the law required the publication of the name and the amount paid by every person supposed to take out a license there would be no evasion or compounding for a consideration. Bill Jones, who knows he has paid, would look to see whether the amount was "rung up," and if he failed to note Pete Jackson's name in the record of those who had stepped up to the Captain's office he would like to know the reason why. With a weekly bulletin containing a record of streets swept it would be impossible for dishonest contractors to evade their work. In the same manner track could be kept of street work, for it would be highly impolitic to say that half a dozen men were patching a street on a certain date if none of the residents on the block had witnessed the performance. The inquisitive citizen could learn from such a bulletin whether supplies were purchased at anything like the market price and he could penetrate the mysteries of a system which puts a premium on the evasion of genuine competition.

But it is not necessary to sketch all that might be accomplished through the agency of prompt publicity regarding the conduct of municipal affairs. At present the people are wholly in the dark regarding them, and it is just possible that their ignorance is responsible for a grossly exaggerated idea of the extent of their losses. Publicity might have the effect of showing us that while there is some waste and peculation, enough money is not provided to produce really desirable results. If such a demonstration were made it would be of infinite value, as it would teach some of us that we are standing in our own light. What is most needed in the United States at present is confidence in municipal servants. The popular impression that hopeless corruption prevails is undermining our faith in representative government. The sooner we devise a method of governing our municipalities in a business-like fashion the better for the country. Minute publicity will be a means to that end. Municipal government by bell punch may save the situation, restore our self-respect and establish our prestige as a practical people.

# Impressions of the Irrigation Congress.

The following paper by Governor George C. Pardee was read at the October, 1903, meeting of the Club:

I sincerely hope that the Commonwealth Club has not made up its several minds that, because it has been written by the Governor of so great a State as California, this paper will possess any merit or that it will either entertain or instruct the members of the Club. In fact, I am sure that, had it not been for the personal importunities of my good friend, Mr. John P. Young, who, when he really wheedles, cannot be refused, this paper would never have been written. And I am not so very sure but that it would have been wiser on the part of the author had he steeled his heart against the Young blandishments and refused to expose his ignorance, at least in writing.

For, gentlemen of the Commonwealth Club, it is no easy matter to go to such a gathering as was the National Irrigation Congress recently held in Ogden, and then, on your return, sit down and give your recollection of it. Horace Greeley it was, I think, who wrote "Recollections of a Busy Life," and this paper might well be entitled "The Recollections of a Busy Congress by a Busy Governor." For it was a "busy" Congress. Not busy, perhaps, as the colored porter on the Presidential train said of the California Local Committees which swarmed onto the train at every stop, for, as he expressed it, "Dese yere local committees makes me laugh! Dey's like a lot 'er ants on a hot rock. Dey's so busy a doin' nuthin'." And, while the Congress was busy, it was not, altogether, "busy a-doin' nuthin'." And neither, I hope, was, or is, the Governor.

The nine hundred and odd delegates took the Congress very seriously. They attended the morning sessions with great diligence, and few of them were absent in the afternoons. It is true that, for the vast majority of the delegates, there wasn't anything under heaven to do but sit and listen to the papers read and the speeches made upon all phases of irrigation and its tributary matters. But, representing, as they did, some twenty-six States and Territories, these delegates were terribly in earnest. There were very few papers that were dry enough to drive them from the Mormon Tabernacle in which the meetings were held, and they listened with grim determination to all that was said. They seemed to feel that the subject matter under discussion was of such great importance to the whole country, particularly the arid West, that none of them dared miss anything that was said for fear he might miss something that was good.

One would suppose that such a gathering to deliberate upon such a subject would be the arena in which would be displayed the arts of the orator; that, with the opportunities for trope and metaphore there presented, with the "turning of wastes into garden spots," and causing the "desert to blossom as the rose" (which, as everybody knows, irrigation has done, is doing and will continue to do), one would suppose that such an occasion would be seized upon by the orators. There was, as a matter of fact, but little real oratory. Being a loyal Californian, however, I am glad to say that, to my notion, the most eloquent and pleasing speech of the whole Congress was made by our San Diego fellow-citizen, Mr. W. E. Smythe.

And, stranger than the absence of real oratory was the fact that nobody really attempted it. The addresses were mostly sober, straight-from-the-shoulder talks, dealing with facts as they seemed to present themselves to the talkers and readers, who really seemed to be there only with the idea of wrestling with a subject which appealed to their reasons as of the greatest importance to us all.

Of all the gathering there present, the sturdy Secretary of Agriculture, Mr. Wilson, was, far and away, the most popular. The convention rose to him whenever he rose to it, and the mention of his name (which was frequent) always brought forth a round of hearty applause. The Congress even sat, with the greatest patience, and listened (those of them who could hear) to a paper, somewhat lengthy for such an occasion, from Mr. Wilson, the subject matter of which could not have interested them very much. His reception and the respect shown him, seemed to me to indicate the great interest the farmers generally have in the Department of Agriculture, and that they appreciate greatly the efforts its head is putting forth in their behalf.

Another thing that struck me was the prevalence of Governors (there were a round half dozen of us there) and United States Senators (some four or five) and Representatives in Congress. A gathering such as this that attracts so many men notable, at least, for the public positions they hold, would indicate that some of us looked upon it as of considerable importance. But, while we Senators, Representatives and Governors were there in somewhat large numbers, we didn't seem, as the boys put it, to "cut much ice." Those of us who attempted to make speeches were very well received; but, some way or other, none of us could arouse anywhere the enthusiasm that Mr. Secretary Wilson did. And even General Booth-Tucker, of the Salvation Army, laid over the whole batch of notables (with the exception of Secretary Wilson) in a way that made some of us look rather tired. But the General's talk was a remarkably good one. He stood there for half an hour and gave that Congress wit, wisdom and anecdote. He had the delegates cheering wildly one moment and as still as the grave the next; and a moment later had them shrieking with laughter. It was a wonderful exhibition of the power of an earnest man, master of his subject, talking to an audience who were deeply interested in the thing he was talking about. His subject was colonies, and he told of the colonies in California that the Salvation Army had established "for landless man on manless land." It was not an eleemosynary scheme that he there unfolded. It was strictly business. No man, nor woman, received help without being expected to pay for it. The money they received was a loan to be repaid with interest. The land they received was to be paid for. And, the General said, the debts were always paid.

My notion is that every one of the delegates who heard Booth-Tucker has a better feeling toward the Salvation Army and its work than ever before. At any rate, the whole Congress rose as one man and gave the General three hearty cheers when he sat down—an honor that we Governors would dearly loved to have received.

Notable among the delegates were officials of the United States Geological Survey. Mr Newell, the engineer having in charge the engineering work provided for under the Newlands Bill, for the building of storage reservoirs, took the meeting of the Congress as an occasion for gathering together the whole force under him, some thirty odd in number, having to do with this work. And they put in the time, between sessions of the Congress, in getting better acquainted with each other, in discussing plans and in talking over matters connected with the work. One of my college classmates happened to be in the party, and as he occupied a position next under Mr. Newell, I was fortunate enough to be invited to dine with the party. They are a bright, earnest, capable lot of men, thoroughly imbued with the importance of the work they have to do; and I learned from them many things that interested me very much. When they have gotten fairly at work, California will have no cause to complain. Her wealth and opportunities will be greatly enhanced, and she will have great cause to thank Mr. Newell and his people.

Just at present they are actively engaged in San Diego and San Bernardino Counties putting water from the Colorado River upon those so-called deserts. They also have actively begun work upon a scheme to take California water from the Truckee River and put it upon Nevada lands. I, of course, made a face at that; but Mr. Newell calmed me by saying that there was plenty of water for both Nevada and California, and that Nevada needed it most. And when I repeated this last to Governor Sparks of Nevada, he looked nonplussed, and then, breaking into a smile, said, "Oh, yes; on the land, of course."

Mr. Newell has also under consideration, and well advanced, too, a scheme for the better and more efficient use of the water from Kings River. When completed, as it will be before very long, this alone will add greatly to California's great resources. It will make still greater addition to Fresno's already great wealth, and will make possible, I hope, another Riverside, with 10,000 people living happily, contentedly and affluently on 13,000 acres of irrigated land.

They also have under preliminary consideration (but this is not yet ready for publication, I warn the gentlemen of the Press) a scheme for irrigating the whole Sacramento Valley, and, taking the surplus water across Carquinez Straits, putting under irrigation the west side of the San Joaquin, which needs it greatly, a long way south of Tracy.

And this reminds me of the possibilities of the great Sacramento Valley, with some 6,500,000 acres of arable, irrigable land within its confines. The Valley of the Po, in Italy, has some 3,500,000 such acres. And upon these acres it supports, in affluent Italian style, some 6,000,000 of people. The Valley of the Sacramento, well irrigated, could easily support, in affluent California style, at least 10,000,000 people.

It is always an aggravating thing to me to go around through the Sacramento Valley and see its vast area held in parcels almost as large as some European principalities. With a climate as good as can be asked for, with a soil that will raise almost anything that grows, with water, literally, "to burn," the Sacramento Valley to-day is wasting its substance in what once was riotous wheat-growing. Cut it up into small holdings, irrigated as it can and ought to be, the Sacramento Valley would soon be what Southern California says it is, the garden spot of all this world. I would not, for a moment, decry the South. There they have, literally, turned deserts into gardens. They have literally created wealth, and lots of it, too. But the Sacramento Valley, with vastly cheaper land, with water cheap and plenty, with a climate such as it only possesses, could, as I once heard a preacher friend of mine say, give the South "aces, cards and spades, and beat her out easy." There is a long stretch of foothill country north and south of Oroville that can produce oranges (and as good as anybody's oranges) a month earlier than any other part of this State. Land there is cheap and plenty; so is water. Put the two together and plant oranges and lemons, and, in ten years the South would be out of business entirely.

Now, I know that this is rank heresy on the part of the Governor of the whole State of California to say all this. But I'm just going to rely on the generosity of the gentlemen of the Club not to betray me.

But I have wandered far afield from my recollections of the Irrigation Congress. But I know you will pardon me, for, as one of our metropolitan dailies put it, "Governor Pardee has come back from the Irrigation Congress an enthusiastic irrigationist." And that alone is, I hope, sufficient excuse for my digression.

Just what the Congress accomplished remains to be seen. But I cannot help but think that with nine hundred earnest, enthusiastic delegates there, representing twenty-six States and Territories, with the Government committed, through the Newlands Bill, to the policy of rendering possible the irrigation of our arid lands—I cannot help but think, I say, that the Congress will bear good fruit. It is true that there were but little discussion and few fights; but, nevertheless, that convocation of earnest men, patient and willing to listen to almost anyone who talked about irrigation, or anything pertaining to it, shows the drift of public sentiment and opinion. And the fact that Congress, representing the whole nation, only a small part of which is now considered to need irrigation—the fact that Congress passed the Newlands Bill and thus committed the Government to the policy, shows that public opinion is coming our way and that, very soon, irrigation will be as much a national matter as navigation now is; and that the Government will, before very long, be taking water from rivers for purposes of irrigation with just as much assiduity as it is now confining water to the rivers for purposes of navigation. The latter is now looked upon as a public charge. Irrigation, just as important, or even more so, to the whole people, will, as surely, become as great a matter of public concern as the former now is.

But I wander again. So, to return to our Congress muttons: The only real fights that took place on the floor of the Congress were, first, the settlement of the question of voting, and, second, on the expression of the sentiment of the Congress as to the disposal of the public lands.

The first contest was short, sharp and decisive, and showed a wonderful amount of generosity on the part of those States and Territories which, like California, had large delegations in attendance. The question came up as to whether every delegate present should have a vote, or whether each State and Territory represented should have twenty votes, to be cast by the delegates present, and no more. And it was decided that Utah, with 140 delegates, and California, with 60, should have no more votes than Maine, with one delegate, Massachusetts, with two, and Florida, with two. This determination by the Congress showed its wisdom, its generosity and its fair-mindedness.

The other fight was, as I have said, upon the disposition of puhlic lands. The matter came hefore the Congress in the reports, a majority and a minority, of the Committee on Resolutions. The majority recommended that Congress be urged to repeal absolutely the Desert Land Act, the Commutation provision of the Homestead Act, and the Timber and Stone Act; while the minority wanted the laws left just as they are. The supporters of the majority report said that great frauds had heen, and are heing and will he perpetrated under all three of these acts; that all kinds of public lands have been, are heing and will be fraudulently obtained, at ridiculously low prices and in large bodies, to the exclusion of the actual settlers and home huilders, under these laws; that the original intent of the laws, to give actual settlers cheap homes, was heing, through fraud, defeated; that, at the present rate of the taking up of the public lands, it will not he many years hefore there will be no more puhlic lands, and that, instead of there being millions of homes on what is now puhlic land, this vast domain will he owned by a few land harons. The advocates of repeal made a gallant fight. But the advocates of the minority report said that the public lands were for the public; that if there were frauds perpetrated, it was the fault of the officers who sold the land, hecause the law throws all precautions around the disposal of the public domain; that it was necessary to have the land taken in large tracts, both forest and desert, in order that it might he properly improved, irrigated and used; that the small holder of either desert or timber land was helpless, from want of means, to do anything with his holdings. And one Congressman, in his eagerness to make a point in favor of the minority, said that, at the present rate of appropriation, the public lands would last five hundred and fifty years. But a supporter of the majority report showed, by his figures, that, at the present rate of appropriation, there wouldn't be any public land left in six years.

It was a pretty lively fight. And it was whispered, and sometimes shouted, around the convention that the proponents of the majority report were desirous of taking the puhlic lands out of the market in order to increase from $5,000,000 to $50,000,000 the value of lieu scrip which certain railroads and other large land owners had acquired by reason of certain forest and other Government reserves having been made. And it was also claimed hy others that the sheep and cattle men wanted the puhlic lands withdrawn from sale so that they might still use them for ranges. And a third party claimed that the majority report was for the purpose of rendering more valuahle the lands already acquired, in large holdings, by those who had already made land-hay while the Government cheap-land-sun was still shining.

On the other hand, it was claimed that the attempt to leave the public land to be still acquired under the Desert Land Act, the Timber and Stone Act and the Commutation Clause, was an attempt, on the part of the Land Barons, to add still more to their already gigantic holdings and to place at the mercy of those who had already committed great frauds the puhlic domain.

So the war went on, until Representative Needham of California introduced as a suhstitute for both majority and minority reports, a resolution to the effect that Congress be asked to so amend these laws as to render fraud impossible. And this resolution was adopted. It was, of course, a partial victory for those who think the puhlic lands should be left as they are to he taken up as they have heen taken up. But Mr. Needham says he means business, and it may be that amendment will he hetter than repeal.

There was an exhihition of irrigated fruits held in Ogden during the continuance of the Congress. Montana, Idaho, Washington, Utah and Oregon competed. California, receiving notice too late, was not inclined to compete. But several loyal Californians sent fruit there to be given to the delegates to eat. But when the exhihition was surveyed, it was determined to put the California grapes in competition. It was done, and we got a medal for the best grapes. Had that medal not heen won, I do not think California would have ever seen her Governor again. Because the putting of the grapes in competition was directly against the orders of the State Board of Trade and those who claimed to he experts in such things. But, as is not infrequently the case, Governors rush in where experts fear to tread.

Now, gentlemen of the Commonwealth Club, if you will permit me to growl just a little, I'll bring this paper very shortly to a close. The Governor is frequently called upon to make appointments on Boards of Management for various State institutions and as delegates to various congresses. None of these positions pay any salaries. They take a lot of time and cost those who hold them lots of money. It is easy to get some kinds of men to take these places. But this Governor, being cribbed, cabined and confined by a Private Secretary who has a desire to have only the best men fill these very important positions, feels called upon to invite such men as those who constitute the membership of the Commonwealth Club to thus serve the public. But, while our best citizens are always willing to condemn (and I am very glad they do) the way public affairs are conducted, it is only with the greatest difficulty that I can induce any of them to accept these positions of trust. Of course, I know they are busy. So was I hefore I became Governor; so was Senator Perkins before he became Senator; so was former Senator Felton before he became Prison Director; and so were twenty other men who have been good citizens enough to accept my appointments. But, gentlemen of the Club, it is every man's duty to take his portion of the public duties upon his shoulders and carry it as a good citizen should.

But, there, I have preached enough. It is an old story, and you, of course, are tired of hearing it.

And, with this parting request, I will stop: For this rambling, inchoate paper, which begins nowhere, wanders almost everywhere and stops nowhere, which has neither head, body nor tail, which tells no story and conveys no moral, which teaches nothing, neither does it instruct—for all this you have to blame only our good friend Young. Upon his head be it—"my withers are unwrung."

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## Forestry and Irrigation.

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At the October meeting of the Club the following communication from Professor Elwood Mead was read:

WASHINGTON, September 24, 1903.

Mr. John P. Young, San Francisco, Cal.:

My Dear Mr. Young: On my arrival home from Europe this week I found your invitation to attend one of the meetings of the Commonwealth Club in your city, and I wish I could arrange to be with you. Forestry and irrigation are the topics to which most of my time and thought are given. If it were possible for me to accept, I think I should talk about the growth in the economic importance of the public water supply which has taken place in the last twenty-five years and the changing ideas of students of laws and economics regarding the principles which should govern the public control of streams.

In Europe, as with us, the growth of cities and towns is making a greater demand upon streams for water for domestic purposes. The building of factories has increased the consumption of water in those industries. The improvements in electrical transmission has made water power an industrial force wholly undreamed of a quarter of a century ago. Increasing population makes it necessary to grow larger crops, and irrigation is being used like fertilizers, as an agent of increased production. The result is that water is no longer free. Rivers have a commodity value like coal and iron mines. Grants of water made centuries ago are being resurrected as a means of controlling values which the increase in population and industry has created. Old rights are becoming not a means of protection to actual users, but a menace to further development. One of the most notable books issued in Germany during the past year is a discussion of the economics of water ownership. The Swiss Government has been compelled to purchase some of the old rights in order that the Government may pro-

ceed to make use of the power of certain rivers, and a commission having at its head the professor of constitutional law in the university at Bern has recently framed a code of laws intended to put an end to the contradictions and abuses of the statutes of the different cantons.

The future population and wealth of California depends, in my judgment, more largely upon the conservation of its water supply than on the management of any other resource. Every acre of land which can be brought under irrigation will be doubled in taxable value and productive capacity. A section of irrigable land will employ more than twice as many people as an unirrigated section and they will live under better social conditions. The great fertility of the soil and the superior climatic advantages of California mean inevitably that its irrigated districts are to be densely populated if the sources of the water supply can be so protected as to secure the gradual melting and running off of the snows and if the distribution of the streams can be carried out under such supervision as will insure to every water user his share of the common supply. In order to accomplish either one of these results there must be an aggressive public sentiment at home insisting that it shall be done.

The preservation of the water supply requires the continued preservation of the mountain forests where these waters rise. Without this, we will inevitably have alternating periods of flood and drought. But these forests will not be saved from either fire or the ax if the work is left wholly to a few people or to the General Government at Washington. The enactment of the right kind of laws and the maintenance of their effective administration will be assured only when watched by the people.

The same is true with regard to the use of the water supply. If public sentiment does not insist that rights to water shall be based on use and that nothing except beneficial use shall justify the acquirement of rights in public streams, those sources of wealth will be absorbed in speculative holdings. If public interest does not support measures for improvement in methods and scientific investigations to determine the needs of crops and the methods of application which will secure the best results, then the extravagant use and waste which now prevails in many sections will continue for an indefinite period and development will be correspondingly restricted.

The protection of the water supplies and their proper distribution among users will be a more important and perplexing question in the future than it is at present. As population increases and land becomes scarcer, the struggle for control of the water supply and the need of the largest possible water supply will both be augmented. The result will be that questions which are now grave will require men of special training to rightly solve them.

We should begin now to train the future citizens of the State to deal wisely and honestly with these questions. Every school ought to be an educational agency. The departments of irrigation and forestry now established in the State University are destined to perform an important service to the State, both in training the future citizens and serving as centers of influence in the promotion of the State's progress and well being. I believe this instruction should be still further extended and that there should be primary courses provided in irrigation and forestry for the common schools. In California these questions are of fundamental importance, but they are beginning to be of general interest to the whole country. During the past year the universities of Colorado, New Hampshire and Wisconsin have instituted courses in the economics of irrigation, in which the subject is being studied as the economics of tariffs and transportation have been studied for several years. The considerations which justified these departures in Eastern institutions apply with ten-fold force to both of California's great universities and to all schools of secondary instruction in California.

If it were possible for me to be with you, I should like to take a little of your time to explain the scope and purposes of the investigations now being

carried on by the Irrigation Department of the State University and by this Office, in co-operation with the State Government. We are collecting the facts which show how water is being used, what it costs to furnish it, what are the sources of waste and loss, and how these may be prevented. We hope in this way to gather the data necessary to make irrigation in California a scientific pursuit and to have the State the equal of any district in the world in the economy and skill with which water is applied to crops.

I hope your meeting will not exhaust the subject and that I may be able to meet with you when I come out to join my classes at the University.

Sincerely yours,

ELWOOD MEAD.

# CIVIL SERVICE NUMBER

TRANSACTIONS OF THE

# COMMONWEALTH CLUB
OF CALIFORNIA

VOL. I SAN FRANCISCO, JAN. 15, 1904 No. 2


## Officers and Members.

At the December meeting of the Club, H. Weinstock of Sacramento was re-elected President for the ensuing year.

At the January meeting President Weinstock announced his appointments as follows, being the same as during the previous year:

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| PRESIDENT | H. WEINSTOCK |
| VICE-PRESIDENT | EDWARD F. ADAMS |
| SECRETARY | FREDERICK BURK |
| TREASURER | JOHN P. YOUNG |
| GOVERNORS | GEORGE W. DICKIE<br>RUFUS P. JENNINGS<br>C. H. BENTLEY |

The Governors, with the President, Vice-President, Secretary and Treasurer, constitute the Board of Governors.

The membership of the Club was as follows on January 15, 1904:

ADAMS, EDWARD F., Editorial Staff San Francisco Chronicle.
ANDERSON, ALDEN, Lieutenant-Governor of California.
ANGELL, FRANK, Professor of Psychology, Stanford University.
BENTLEY, R. I., General Manager California Fruit-Canners' Association.
BENTLEY, C. H., Manager Sales Department Fruit Canners' Association.
BERWICK, EDWARD, Retired Farmer.
BURK, FREDERIC, President San Francisco State Normal School.
CUSHING, OSCAR, Attorney; Member State Board of Charities.
DAVIS, ANDREW M., Merchant.
DENICKE, E. A., Banker.
DENMAN, WILLIAM, Attorney.
De VECCHI, PAOLA, Physician.
FITZGERALD, R. M., Attorney; Member State Board of Prisons.
FORD, TIREY L., General Counsel United Railways; ex-Attorney-General.
FREEMAN, A. G., Manager J. K. Armsby & Co.
FRANKENHEIMER, J. B., Physician.
GARCEAU, A. E., Physician.
GREGORY, WARREN, Attorney.
GRUNSKY, C. E., City Engineer of San Francisco
HARRISON, WILLIAM GREER, Manager Insurance Company.
JENNINGS, RUFUS P., Executive Officer California Promotion Committee.
KEELER, CHARLES, Author.
LAWLER, W. P., Judge Superior Court of San Francisco.
MAGUIRE, JAMES G., Attorney; ex-Congressman.
MANSON, MARSDEN, Engineer; ex-Commissioner of Public Works.
MARKS, S. M., Secretary Pacific Mutual Life Insurance Company.
MARX, C. D., Professor of Civil Engineering, Stanford University.
McADIE, A. G., Professor, United States Weather Bureau.
McCLYMONDS, J. W., Superintendent of Schools, Oakland.
McCORMICK, E. O., Passenger Traffic Manager Southern Pacific Co.
McLEAN, S. J., Associate Professor of Economics, Stanford University.
McNAUGHT, JOHN, Managing Editor San Francisco Call.
MEYER, F. H., Architect.
MILLER, A. C., Professor of Political Economy and Commerce, University of California.
MILLIS, H. A., Assistant Professor of Economics, Stanford University.

**LIST OF MEMBERS—Continued.**

MOODY, C. A., Assistant Editor Out West, Los Angeles.
MOORE, E. C., Assistant Professor in Education, University of California; President State Board of Charities.
MOSES, BERNARD, Professor of History and Political Sciences, University of California; ex-Member United States Philippine Commission.
MURDOCK, CHARLES A., Printer; ex-Member San Francisco Civil Service Commission.
PARDEE, GEORGE C., Governor of California.
PELTIER, GEORGE W., Banker.
PHELAN, JAMES D., President Mutual Savings Bank; ex-Mayor of San Francisco.
PLEHN, CARL C., Dean of College of Commerce, University of California.
PORTER, ROBERT, Attorney.
QUINN, JOHN E., ex-Member San Francisco Civil Service Commission.
RAMM, REV. C. A., Member of State Board of Charities.
REED, CHARLES WESLEY, Attorney.
RICKARD, THOMAS, President Berkeley Board of Trustees.
RIORDAN, D. M., Mines.
SBARBORO, ANDREA, President Italian-American Bank.
SMYTHE, WILLIAM E.
THOMAS, WILLIAM, Attorney.
TODD, FRANK M., Editor Merchants' Review.
WALCOTT, E. A., Editorial Staff San Francisco Examiner.
WEINSTOCK, HARRIS, Merchant.
WHEELER, BENJAMIN I., President University of California.
WHEELER, WILLIAM R., Merchant.
WICKSON, E. J., Professor of Agricultural Practice, University of California.
WING, C. B., Professor of Structural Engineering, Stanford University.
YOUNG, JOHN P., Managing Editor San Francisco Chronicle.

## The Work of the Club.

The December meeting of the Club was devoted to a discussion of the methods of procedure whereby the Club could make its work of most value to the community. Each member present having expressed his views it appeared to be the general opinion that upon some subjects likely to be discussed the publication of the papers read with, when possible, a synopsis of the discussion upon them, would be sufficient, but that in regard to other matters it would be desirable that the club should engage in direct promotion of the policy favored by the club and that the proper course to be taken in any case would appear and be determined as occasion should arise. A resolution covering the matter was referred to the Board of Governors, which subsequently adopted the following:

First—That it is the judgment of the Board that for the present, the greatest public service which the Commonwealth Club can render is the ascertainment and publication of what are believed to be the facts bearing on public questions.

Second—That to this end, papers read before the club should usually follow the form of official reports, beginning with a concise statement of the facts on which comment is based.

Third—That whenever possible, these papers should come to the club as representing not merely the views of the author, but of the section to which the subject belongs.

Fourth—That to this end section meetings are imperative, and chairmen of sections, in accepting the position, must assume the responsibility of organizing their sections so that they shall at all times be preparing subjects for consideration by the club, section meetings being called when deemed best, for digesting the material collected.

Fifth—That chairmen of sections needing pecuniary aid in the collection of data should be at liberty to apply to the governors, who will supply such aid whenever funds are available.

It was also decided that at the close of the final discussion of any subject, a vote of the club should be taken upon the question involved and the result recorded. The club, of course, may at any time proceed to promote the adoption of policies or measures which it approves.

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# Discussion on Civil Service.

At the November meeting a discussion on Civil Service was introduced by the following from E. A. Walcott, Chairman of the Section on Social Welfare:

THE CIVIL SERVICE SYSTEM.

The civil service problem is the problem of getting efficient service in government. So far as we are concerned with it, it is the problem of securing the best service in the subordinate positions of government.

There are two opposing methods of filling the subordinate offices of government. One is by the personal favor of the head of the office in which such subordinates are to serve. The other is by some form of test of the fitness of candidates to perform the duties of the office, made in such ways as to eliminate, so far as possible, the element of personal favor.

For the sake of brevity, and with no wish to stigmatize it, we may call the former the "spoils" system. With no thought of assuming a conclusion, we may call the latter the merit system, or follow popular usage and call it merely the "civil service" system.

Which gives the bettter results—the spoils system or the merit system?

To decide this question it is necessary to consider many subordinate questions, and I shall attempt to formulate them briefly.

Does the merit system bring a higher or lower class of talent into the public service than the spoils system?

Do the civil service appointees under the merit system perform their duties more or less faithfully than those appointed by personal favor?

Do civil service employees give more or less attention to politics than those appointed by the spoils system?

Is time paid for by the public used in political service? If so, is more time taken by one class than the other?

Is permanency of tenure a part of an efficient civil service system? Is permanency secured by the merit system?

Does security of tenure lead employees to do more or less work than tenure at the will of the head of the office? Does it tend to fill the offices with superannuated employees?

Are employees under the merit system more or less active than employees under the spoils system in efforts to secure higher salaries and less work? Does the merit system bring in its train a civil service pension list?

Does favoritism have any share in the administration of the merit system? Does this system have a tendency to substitute appointment by favor of the Civil Service Examiners or Commissioners for appointment by favor of the head of the office?

Do all applicants for positions have an equal chance to demonstrate their fitness?

What precautions are taken to prevent one person from having an unfair advantage in the examinations over another person? Are questions known in advance to favored applicants? Can one person pass the examinations for another—that is, can the competent A pass the examinations under the name of the incompetent B, and B receive the appointment?

Does administration by the civil service system cost more or less money than administration by spoils appointees?

I believe that these questions cover substantially all the elements of the civil service problem of the United States. Mr. Murdock and Mr. Moran will answer some of these questions with the record of experience.

## The Merit System.

The following paper was then read by Charles A. Murdock, former Civil Service Commissioner of San Francisco:

Next to the abolition of slavery in these United States, the most important political modification of the last half century has been the practical substitution in National administration of the Merit System for the Spoils System. The agitation that preceded it was popularly known as the Civil Service Reform. When the government was committed to the principle, comparative quiet succeeded and its progress and results attract little attention. We fail to realize the radical change and the far-reaching improvement effected by the adoption of the reform methods. To fully appreciate what has been accomplished, we ought to begin with the governmental structure erected by our forefathers when they set up business. In its separation of powers into the legislative and executive, the department that was supposed to express the will of the people had no effective control over the execution of its laws, and the political party arising from necessity assumed the responsibility of co-ordination, pledging its nominees to a stated line of conduct, and practically controlling administration.

The political party is a powerful agency capable of great beneficence where greatly needed; capable also of tyranny fearful to contemplate, and of corrupting influence that at times seems to threaten the very existence of republican insti-

tutions. The party undertaking to co-ordinate and make harmonious and effectiv the legislative and executive departments must at least keep up its organizatio and it is no easy task and hardly to be expected from wholly disinterested mo tives. As James Bryce puts it, "To rely on public duty as the main motive powe in politics is to assume a commonwealth of Angels." And just here we touch th mingled need and opportunity that resulted in that disreputable and damagin practice known as the Spoils System. The necessity of keeping up the part organization has been felt to be so great that the salaried offices, generally, hav been regarded as rewards for party service. Indeed, if often appears that the sol end of party activity is the division of the offices to be filled when victory perche Party platforms are not statements of political principles, but vote-catching trap skillfully constructed by adepts in what is called "practical politics." The Spoil System arose under a failure to distinguish administration from politics and i placing ministerial officers and the great army of clerks and subordinates unde political control. It is necessary and proper that legislators and the chief exec tive officers should be named by the political party, but the contention that to th victors belong the spoils is vicious in the extreme.

The Spoils System in the United States is credited to the State o New York, where political warfare had been bitter from colonial times. Aaro Burr was a typical machine politician; Martin Van Buren was an ap pupil, and when in 1829 he became Jackson's Secretary of State he put i practice methods never before countenanced in National administration. Fo forty years, and under six Presidents, but seventy-three removals o United States officials had been made. Jackson made 2,000 removals in th first year of his term. The early Presidents were strong in both the advocac and the practice of the Merit System. Nothing could be more forcible and sens ble than Washington's words. Before his election he wrote to a friend who ha asked an appointment: "If I should once more be led into the walks of publi life, it is my fixed determination to enter there, not only unfettered by promise but even unchargeable with creating or feeding the expectation of any living ma for my assistance to office." As the third reason for this he gave, "Because th ear of the nominator ought to be open to the comments of the merits of eac candidate and to be governed primarily by the abilities which are most peculiarl adapted to the nature and duties of the office which is to be filled."

John Adams was equally sound and firm. He said: "When I came int office it was my determination to make as few removals as possible—not on from personal motives, not one from party considerations. This resolution I hav invariably observed."

Jefferson was the first President of a new party, but he made only thirt nine removals, although many of his subordinates were politically hostile to hin

Madison and John Quincy Adams made no removals for political cause.

No clearer statement of the true principles of government can be foun than in Daniel Webster's concise words in a speech upon the tenure of office a of 1820: "Government is an agency created for the good of the people. Offices ar created not for the benefit of those who are to fill them, but for the public co venience." His sometime opponent, Calhoun, was in thorough accord on this que tion, saying, "The true principle is to render those who are charged with me ministerial offices secure in their places so long as they continue to discharge the duties with ability and integrity."

It is a somewhat striking fact that, with two possible exceptions, all of th Presidents have at some time recognized the desirability of a pure administratio of the service, but that since Jackson's time they have failed to institute it. shows that custom is immensely strong and that there can be no reliance in ove turning established methods excepting through the passage and enforcement o stringent laws.

The Spoils System worked two great evils. It greatly impaired administr tive efficiency and it degraded politics. No argument is needed, and illustratio are superfluous, to illustrate the first assertion. Officials selected for party se vices instead of fitness capacity, and character, subordinates incompetent, an often dishonest, intent on rendering the minimum of service, what else cou result than public administration that deserved contempt? With the immens growth of the country the situation became steadily more intolerable. Presiden well-intentioned failed in their efforts to cope with it.

It is difficult to summon a more pathetic picture than Abraham Lincoln fa ing a problem such as few men ever faced, his great heart bleeding with sorro every nerve strained to meet his responsibilities; with treason in front and en and distrust at his side, needing all his strength of mind and heart for his herc lean task, beset from morning to night with a horde of contemptible office-seeker

who sapped his powers and tried his patience to the utmost. Hear his gentle plaint:

"I wish I could get time to attend to the Southern question. I think I know what is wanted and believe I could do something toward quieting the rising discontent, but the office-seekers demand all my time. I am like a man so busy in letting rooms in one end of his house that he cannot stop to put out the fire that is burning in the other. Sitting here, where all the avenues to public patronage seem to come together in a knot, it does appear to me that our people are fast approaching the point where it can be said that seven-eighths of them are trying to find out how to live at the expense of the other eighth."

The abuses incident to the system were very great and widespread. In the New York Custom house, from 1866 to 1871, Collectors—all Republicans—made 1,678 removals in 1,565 days. The percentage cost of collecting duties in the United States was four times that of Germany and nearly five times that of England. The New York Postoffice from Jackson's time to the appointment of Thomas L. James in 1873 was a disgraceful center of inefficiency, peculation and extravagance. It was no uncommon thing for policemen to bring in drunken carriers and to empty their pockets of mail before taking them to the station-house.

Perhaps the worst point was reached during the administration of Andrew Johnson. Those who ought to know say that a condition of things existed which rivals the most corrupt era to be found in the history of any nation.

The Spoils System is grossly extravagant in supplying inefficient and worthless subordinates and also in fostering fraud. I have been told of an instance in San Francisco in which a clerk drew pay for an entire term and never touched pen to paper. The superfluous attaches carried on the roll of every State Legislature is a sufficiently shocking illustration of waste and dishonesty. The system is a severe trial to the heads of departments. The task of distributing patronage is enough to deter an honest man from taking office. To choose between the claims and necessities of ten men for every oue who can be appointed is about as disagreeable duty as can be imagined, and no self-respecting man can turn over his appointments to the party boss and take the cattle he brands.

Of the effect of the Spoils System on the party I ueed say little. It results in machine politics of the worst form and makes all political activity distasteful to auy man of decent instincts. It draws to the control of the party men of the baser sort, who rob it of its true purpose as a means to aid in the expression of the will of the people. It is ready to, and often does, hinder and prevent the true expression of the will of the State; it makes politics a by-word, and debases and degrades public sentiment till public virtue, public spirit, public conscience seem driven from the land. Principles are lost sight of and the only end seems to be the perpetuation of party control and division of plunder. The leaders of the party are the purchased tools of corporations and the patronage offices the refuge of incompetents. If the party is to be restored to its true position as a necessary extra legal agent for the expression of the will of the State and as a coordinating power to render administration effective, the Spoils System must be completely eliminated. If the party cannot be sustained without dividing the offices and positions in payment for those who keep it up, it must be foregone; and if our form of government cannot be maintained if parties are given up it must give place to some other. Nothing can withstaud such demoralizing influences. Corruption, inefficiency, tyranny, fraud in the long run will bring to ruin any form of government which tolerates them. It is surprising how widespread and deep-seated is the notion that public positions and their incidental emoluments are rights to be enjoyed as rewards for party services. The government is rarely thought of as a necessary employer of labor entitled to get the best service for fair pay. Larger salaries and shorter hours are expected as a matter of course.

Merit as a basis of service has been very slow of acceptance. The miserable word "patronage" has gained a vogue significant of the deepest political degradation and of the widespread and deeply permeating influence of the Spoils System that grew to such prodigious strength in fifty years and still desperately contests every inch of ground gained by the supporters of that better way which we call the Merit System.

Let us now briefly consider the beginnings and progress of the movement which has resulted in organized effort to uplift our Civil Service.

It must not be concluded that the downward course of the public service dating from the early part of Jackson's administration was permitted without protest. From that time to 1871, the date of the first Civil Service legislation, hardly a session of Congress passed that some efforts were not made to stay the course or to remedy the evils that were clearly seen. Resolutions and recommendations were numerous, but they never went beyond reference to a committee.

In 1853 and 1855 Congress passed acts providing for what were called pass examinations in appointments for positions paying from $1200 to $1800 salary, and they proved of acknowledged benefit to the service.

In 1864 Charles Sumner introduced a bill providing for competitive examinations. It was a radical measure and failed. In 1866 a strong Committee on Retrenchment made an exhaustive report and its recommendations were embodied in the Jenck's bill, which also failed of passage.

It was not till March, 1871, that the first step was really taken, and then it was only by adroitly tacking on as an amendment to the civil appropriation bill a very simple provision authorizing the President to prescribe rules. It prevailed by a majority of one vote.

The board appointed formulated a plan for competitive examinations, but opposition was encountered at every step, and the House refused to make any appropriation for the expenses of the Commission.

In 1874 the House added two amendments, but again the law remained on the statute books with no appropriation.

In 1882 an effective law was finally passed and in 1883 Congress made its first appropriation. President Arthur gave the movement cordial support. Under his administration 15,573 positions were placed under Civil Service rules. President Harrison added 15,598 and President Cleveland in his two terms added 55,760. During President McKinley's term 1,848 positions were added.

President Roosevelt was one of the three United States Civil Service Commissioners for six full years, from 1889 to 1895. His predecessors have been friendly to the reform, but he has been an enthusiast. His experience, his knowledge, his interest, peculiarly fit him for effective administration.

The report of the United States Civil Service Commission for the year 1902 shows a steady increase of the Merit System. The number of persons examined for appointment and promotion was 62,029. Of these 41,039 passed. Among the additions to classified positions have been the Rural Free Delivery Service and the clerks and employees in the Census Bureau.

During the past five or six years the number of annual appointments has increased from about 4,000 to nearly 15,000, and the number of classified positions from a little over 30,000 to about 100,000.

The classified positions represent salaries of about $80,000,000, while the unclassified positions represent about $25,000,000.

Strong testimony to the practical value of competitive examination is found in the fact that 98 per cent of those passed receive absolute appointments at the end of the probationary period.

It must be admitted that Civil Service Reform has made an honorable record. It has never been without enemies, but it has taken no backward steps. To-day its prospects are brighter than ever before. So far as the National service is concerned, the present administration will push it vigorously. President Roosevelt believes heartily in the Merit System and he believes in strict execution of law. He has said that the two classes from whom the Nation has most to fear are the demagogues and the spoilsmen.

With a President who is fearless, honest and determined, much may reasonably be expected in the enforcement and extension of Civil Service.

The substitution of the Merit System for the Spoils System in the States and cities of the Nation has been somewhat tardy. Massachusetts enacted Civil Service laws in 1884 and the results are admitted to be admirable. No party ventures to oppose a Civil Service Reform policy. All the principal cities have general systems of competitive examinations for positions under the Civil Service. The principle has so justified itself that its provisions are being constantly extended. The Legislature of 1901 adopted rules to apply to police and fire forces of any town upon acceptance of the act by voters of the town giving local option for Civil Service Reform.

New York adopted Civil Service in 1883 and in 1894 embodied its provisions in its constitution. Governor Black tried in 1897 to put through a measure to nullify the essential feature of the competitive system, but he seems to have been the principal sufferer. Competitive examinations hold in all the principal cities, as well as in the State administration.

Chicago adopted the Merit System in 1894, and considering the soil it has done well. As elsewhere, it has been sharply fought. The Supreme Court has recently decided that the Board of Education is covered by the Civil Service Act, not in the appointment of teachers, but for engineers, janitors, etc. The general sentiment in Illinois is favorable for a State Civil Service law. A non-partisan organization with membership throughout the State is moving for its passage.

Both political parties have declared for it, the Democrats including the endorsement of a county law.

Milwaukee, New Orleans and Seattle are among the cities under the Merit System. New Orleans adopted it in 1896 and in 1900 reorganized with a peculiar modification providing that with a change of administration all positions are vacant. They are filled of course from the Civil Service list, but it at least insures a shake-up.

Other States and cities have in some form and to some extent adopted the reform principles, but since legislators are commonly politicians, progress is not rapid, being commonly forced by public sentiment, and reluctantly granted. But in spite of all opposition, Civil Service Reform is surely if slowly gaining its way.

It has not been an easy victory and it is far from being complete, but its progress and promise form an encouraging instance of the triumph of a principle. Few spectacles are more creditable and honorable than the steadfast, patient, determined effort begun by a small number of men of character and public spirit, and carried forward through ridicule, misrepresentation and bitter opposition. George William Curtis, Dorman B. Eaton and Carl Schurz should not be forgotten when we recall the names of our National heroes.

No one has better expressed the fundamental idea of the reform than Mr. Eaton, who framed the first effective law passed by Congress. He says:

"The public has a right to the best persons in its offices who will serve it for the salaries offered, and he who offers the best character and capacity for the salary has the highest claim upon office, quite irrespective of his party and religious views. Every party, sect or party leader that obstructs such a claimant therefore obstructs both individual justice and public interest."

In Europe the Merit System generally prevails. In the cities of Germany and France Civil Service examinations have generally excluded party politics from the appointment of subordinate officers. As evidence of its complete sway in England it is said that when a change of ministry is effected, less than a hundred offices altogether are changed. Patronage appointments and removals for party reasons are practically unknown.

The workings of the Civil Service provisions of our Charter I will leave to Mr. Moran, who is familiar with its entire history. I can speak absolutely of one year and confidently of the preceding years, and I firmly believe that until the Mershon disgrace, every act of the Commission was fair and straight. I submit that three years of strict integrity and punctilious honor cannot justly be effaced by the thwarted efforts of one unworthy appointee. Civil Service Reform in San Francisco has in no sense been a failure. Considering all it has had to contend with it has been eminently successful. If it had been less aggressively enforced at first it might possibly have escaped the litigation that resulted in the most unfortunate decision in Crowley vs. Freud. Shorn of much of its power, the Commission has held steadily on and done much for good government. If the decision has delayed the reform that must come some day it has at least afforded the opportunity for an effective object lesson. No better justification of the wisdom of our charter-framers in including the Merit System could be asked than the contrast afforded by the County Clerk's office and the Tax Collector's or the Registrar's. In one building we have an exemplification of the Spoils System and the Merit System If any sane man has any doubt as to which is superior—may the Lord have mercy on his soul!

Great injustice is done to Civil Service Reform, if it be confined in our thought to one of its methods. It is much more than a plea for competitive examination. Its real object it to compel recognition of the fact that there is a function of government whose discharge, like that of the administration of justice, should be freed from political influence. It is admitted by all that politics has no place in a court room. There is not the same evident impropriety in political interference with administration, but it is equally objectionable on several good grounds and is without warrant or justification.

Now what is it we have gained? It is no startling innovation. It is simply working back to the principles and practices of the first forty years of our National life. It is a determined effort to fill the administrative offices of the government on the sole basis of merit and fitness. It looks to the interest of the government and not the individual; appointing the best man for the sake of the office and not for the sake of the man.

It is larger than any method and is not restricted to any one course of procedure. In overcoming a definite evil it has adopted the most practical means. It is not contended that appointment through competitive examination is the best possible way of obtaining the best results. It seems the best method under existing conditions of correcting a great abuse.

It seems to be the only way of guarding against injustice, favoritism, corruption, political manipulation and fraud. It affords a presumptive but not conclusive proof of fitness. An examination does not reveal everything essential to success. In fact, character, the most important consideration of all, is not to be gathered through answers to questions, but it does one definite thing—it affords absolute fairness and impartiality. There is equality of opportunity. Everyone has a fair chance and when the examination is practicable, it provides an eligible list of men presumptively capable, ranking in accordance with the fitness and capacity revealed through the examination. With a probationery period during which they may be removed from the list if they are found wanting in practical ability, or prove to be men of bad habits or bad character, the result is commonly satisfactory. As evidence of the general reliability of competitive examination, out of 1,316 men appointed in one department of the National Government in 1899, but 22 were removed during the probationery period.

The security afforded by Civil Service methods should be absolute as against the seekers or would-be dispensers of patronage, but inoperative as against sloth or inefficiency. So far as possible, promotion should follow demonstrated merit and practical superiority. Most men need motive, and Civil Service should be so administered as to penalize indolence and reward effort. There is always danger in protection, since it is so easily subject to abuse. Civil Service rules should protect against all manner of wrong, but in no form of wrong or worthlessness.

Whatever justification there may be for unfavorable criticism, or for theoretical prejudices, there can be no question but that wherever any department of the government—National, State or Municipal—has been brought under the provisions of the Merit System, there has resulted increased efficiency and decreased cost. This is the practical test. It is naturally not in favor with the politicians, whose power to distribute spoils constitutes his source of strength and his sole stock in trade, but the office-holder who would faithfully and successfully discharge his trust welcomes it, both as a relief from a besetting horde of place-hunters and as an assurance that he will have competent help.

On the examination for clerks held three years ago in San Francisco, a young woman won first place and was at once assigned to the County Clerk's office as a copyist. She held the position until the present County Clerk assumed office. The Supreme Court having decided that San Francisco is not constitutionally able to prescribe Civil Service regulations for a county office, the County Clerk's office, together with the other county offices, reverted to the Spoils System, and the copyists furnished by the Civil Service Commission were replaced by the usual political hangers-on. The result is that the records which were in perfect shape and kept strictly up to date, have fallen behind. Soon after the change was made the deputy in charge told me that he found it impossible to get out of the present force more than about one-half of the quantity of work performed in a given time by the same number of Civil Service employees.

In every department of the city government and in the State offices, the only basis of appointment should be ascertained merit. Competitive examination has its limitations, but under present conditions it is the most practical method of ascertaining presumptive superiority.

There is a great popular misapprehension as to the nature of these examinations. They are often sneeringly spoken of as scholastic, when as a matter of fact they are as practical as they can possibly be made. Intelligence is not ignored, but scholarship is not considered. A knowledge of facts is generally all that is needed to dispose of the opposition of a fair-minded man. Our fine Chief of the Fire Department was inclined to think unfavorably of the selection of firemen and hosemen through a competitive examination, but when he found that the greater part of it was devoted to testing the strength and agility of men, first found sound and of good health, with enough written work to show that they were sufficiently intelligent to understand orders, his distrust vanished. He was entirely satisfied.

It goes without saying that Civil Service must be administered with rigid honesty. It is of no value if the character and conduct of those charged with the high responsibility do not merit complete confidence. There must be no room for suspicion or doubt. Beyond this its administration should never needlessly antagonize the heads of departments under its control. Its course should be so fair, just and considerate as to command respect and even appreciation.

Civil Service rules are to be applied and interpreted reasonably and discreetly; never to be arbitrarily enforced for their own sake. It is the object of the Merit System to promote honest, economical, fair, business-like administration of public affairs, and while it must be firm in standing by its rights when assailed

it is not necessary for it to be unduly sensitive or to assume that self-righteous attitude that so irresistibly invites a kick. Civil Service reform often suffers from injudicious fervor of its supporters. Too much is claimed. Well-grounded objections are scorned. It is made a fetich. Wise loyalty becomes blind fanaticism and intolerance and suspicion shrivel the judgment. It is only the means to an end, but as long as it proves the best means we know, it deserves the firm support of every one devoted to good government.

I believe the first step toward better government in San Francisco should be the bringing of every department of the municipality back under Civil Service, and this Commonwealth Club can do its part by educating public sentiment and by co-operating in the effort to secure the necessary legislation. At the last session of the Legislature the Merchants' Association prepared two amendments to the State Constitution and endeavored to secure their submission. Section 16 of Article 20 of the constitution contains a tenure of office clause limiting the term for which any officer can serve to four years. If this should be held to apply to Civil Service appointees it would largely defeat the fundamental principle of the Merit System, that insures a position once gained during good behavior. It is proposed to add a clause providing that this limitation shall not apply to Civil Service appointees.

The second and more important amendment is the insertion of the word "qualifications" in the famous Section 8½ of Article 11. This is to remove the objection set up in Crowley vs. Freud, upon which Civil Service was knocked out of the county offices. To a layman (as to our Chief Justice) it seems a very small hole to crawl out of, but it must apparently be stopped up.

Whatever legislation is needed must be at least attempted. As a preliminary we need legislators who are men. Neither the city government nor the political parties can stand the Spoils System. To the one it brings extravagance and imcompetence, to the other demoralization and disgrace.

The Merit System is not a matter of sentiment but of principle.

By way of comparison with the Spoils System, is not a contrasted method of greater value? The distinction between them is of the nature of that between right and wrong. One brings waste, corruption, degradation—the other economy, efficiency, honor.

## The Merit System in San Francisco.

Following Mr. Murdock's paper, Mr. Edward F. Moran, Chief Examiner of the San Francisco Civil Service Commission, read the following, the two papers being followed by discussion and reference of the two papers to the section of social welfare:

The establishment of Civil Service as an integral part of the government of San Francisco was a natural outgrowth of the movement for better municipal administration which, after agitating the minds of the people for years, finally resulted in the adoption of the city's present Charter. San Francisco's trouble had been an absence of civic pride; a lack of true public spirit. Men who considered themselves good citizens, and who would have become indignant if charged with a disregard for the city's welfare, took no interest in politics. They permitted their political bosses to select candidates for them, and then they voted their party tickets with a full consciousness of duty well performed. They knew there was something rotten in Denmark, but they were really too busy to discover the cause, or to apply a remedy.

The non-partisan movement had much to do with arousing the so-called good citizen to a realization of his duty. It filled him with resentment against the bosses, who, for years, had made the City Hall the forcing bed of all that is debased and corrupt in municipal mismanagement. It did more. It caused him to realize that municipal government is not a matter of partisan politics, but simply a matter of business, and that in public, as in private business, the best results can be obtained when work is honestly done by capable men. That conclusion led directly to the local recognition of the Merit System as the basis of civic progress.

It is not my purpose to discuss Civil Service from an academic standpoint, but to tell what has been done by its aid in this city. Before passing to the consideration of the details of the system as operated under our Charter, I wish

to say (for some may have an opposite opinion), that the Merit System in San Francisco has passed the experimental stage. It has come to stay. It has weathered the storm and remains strong and vigorous. The Commission has fought an uphill fight. The Civil Service provisions of the Charter have been assailed in the courts, large sections of them have been torn out, and the work, and even the good faith of the Commission, have been subjected to attacks the mendacity of which has been exceeded only hy their maliciousness. But all that is in the way of a reform movement. True reformers gain strength in the heat of controversy, for they know they are right, and that in the outcome their work will be appreciated.

The Civil Service laws of the great Eastern cities were the models upon which the Freeholders hased the Civil Service Article of the Charter. Our law includes most of the hest features of the Eastern laws, and goes much farther than any of them in closing the doors against appointments except in accordance with the Merit System. The Charter presents a complete scheme for appointment upon merit, as determined hy competitive examinations; promotions, similarly effected, and dismissal only for cause, after trial. The Commissioners are empowered to make all necessary rules to put the system into full operation.

There are three Commissioners, appointed hy the Mayor, "known hy him to he devoted to the principles of Civil Service Reform." The term of office is three years. That the people were eager for Civil Service was shown hy the great rush of business upon the first day the office opened on January 8th, 1900. Before noon over 600 laborers had registered and hundreds of applications for competitive examinations had heen issued. By the end of the week the registered lahorers numbered thousands and other thousands of applicants had applied for positions to be filled hy clerks and mechanics. The work of the Commission at that time was done under very unfavorahle conditions. The office was located in the basement of the City Hall; the Supervisors had provided no funds for maintenance aside from the salaries of the Commissioners and the Chief Examiner; there was urgent need of clerical assistance, stationery and the many incidentals necessary for the introduction of one of the most important hranches of the City Government. Fortunately, the Merchants' Association and Mayor Phelan had more than a theoretical interest in the success of the work. The Association furnished stamps and stationery, and even gave to the Commissioners the services of an expert stenographer and clerk for several months. The Association and Mayor Phelan have since aided the Commission by giving the services of attorneys to defend the Merit System from attacks made upon it in the courts, and have been, otherwise, of incalculable benefit to Civil Service.

It is not necessary to do more than refer to the laborious task of classifying the places of employment with reference to examinations, and formulating rules, regulations, forms, blanks, and circulars of general information. Over 20,000 copies of pamphlets were distrihuted in the campaign of education inaugurated as part of the work. These preliminaries completed, the Commissioners turned their attention to the real husiness in hand—the holding of examinations, "which (to quote the Charter), shall he practical in their character, and shall relate to those matters only which will fairly test the relative capacity of the persons examined to discharge the duties of the positions to which they seek to he appointed, and shall include, when appropriate, tests of physical qualifications, health and of manual or professional skill."

## CONDUCTING EXAMINATIONS.

It was first necessary to determine the method of conducting examinations. It is customary in Eastern cities, and under the Federal Government, to give to an applicant in a written competitive examination a small card upon which he writes his name and address. This card he places in an envelope hearing a certain numher, and seals the envelope. The examination answer sheets are stamped with the same numher that is on the envelope enclosing the address card. The applicant, of course, is not permitted to write his name upon his answer sheets, for if he did, the person who rates the answers would know who had written them, and would he therehy open to influence. But as the applicant knows the numher of his set of papers, it is possihle for him to give that information to the Examiner. While the prohability of collusion hetween applicants and examiners through this method is very slight in the Federal service, it yet remains. We saw the danger in the system, and in seeking to evade it, happily hit upon a plan which has been acknowledged by Civil Service experts to be the hest for its purpose in the country.

Each applicant is given a set of sheets upon which to write his answers. To the first of these sheets is attached a piece of heavy green paper, called the

identification sheet, the upper edge and sides of which hear a margin of mucilage, as on an envelope. The applicants write their names upon the identification sheets, which are then folded over upon themselves and sealed, by moistening the mucilage. The identification sheets are thus transformed into heavy envelopes, within which are the applicants' names. When all the papers have been handed in, a number is stamped upon the hack of each identification sheet, and the same numher is stamped upon the hack of the accompanying set of answer sheets. Then the identification sheets are torn off and placed in a sealed package, the answer sheets being sealed in a separate package. By this method, neither the applicant, nor anyone connected with the Commission, knows the number of any particular applicant's set of papers until all the credits have heen awarded and the comparative standing of the applicants determined.

To return to the work of the Commission. In preparation for examinations, we visited every Department suhject to Civil Service jurisdiction, examined the work done by the men, and then questioned them regarding every detail connected with their duties. The next step was to adopt the scope of the proposed examination, and to determine the relative weight to be given to each suhject.

The subjects of examination depend of course on the duties of the position to be filled. All the preliminaries having been arranged, it now remained to consider and adopt the questions to be asked. The plan followed is very simple, and is as follows:

Each Commissioner and the Chief Examiner prepares by himself a list of proposed questions on each suhject. All these lists are submitted at a special meeting of the Commission on the morning of the day on which the examination is held. On the main subject, ten questions are usually asked. Each Commissioner hrings in ten or more questions, and we thus always have from three to four times as many proposed questions as are necessary. The meeting is usually held at 8:30 a. m., and the examination at 2 p. m. At this meeting all the questions are discussed, and finally a list for each subject is adopted. This list includes questions from all the lists originally submitted, care being taken, in every instance, that the adopted questions come always from two or more of the original lists. As soon as the questions have been adopted, they are printed in the office of the Commission. During this work, the Chief Examiner and one or more of the Commissioners are present. As soon as the sheets are printed, they are sealed in a package, stamped with the seal of the Commission, and upon which the Chief Examiner or a Commissioner writes his name. The printing is usually finished only a very brief time before the hour set for the examination. The sealed package is taken to the examination room, and there it remains, closely guarded, until the examination opens, when the package is hroken, and the questions distributed.

When the examination is closed, the answer sheets and the identification sheets are stamped and separated in the manner already described, and they are then sealed in separate packages, on which the Commissioners and the Chief Examiner sign their names, and the packages are then locked in the safe.

## RATING THE PAPERS.

The next step is to rate the papers. After the examination, the Chief Examiner prepares a key giving correct answers to all the questions. This is considered and adopted by the Commissioners, and then a special meeting is held to mark the answers. At this meeting, the sealed package containing the answer sheets is taken from the safe, and first submitted for general inspection. Then the seal is broken, and the papers taken out. Now, rememher, that none of these papers bears a name, and our rules further provide, that any mark of identification will exclude the paper. Though all the papers are numbered, the corresponding numbers are in the other sealed package containing the identification sheets.

In rating papers, what might be termed a horizontal plan is followed. For instance, credit is awarded on the answer to question one, on all the papers, before any consideration is given to question two on any of them. As we adhere strictly to the key, the result of this plan is that all the papers are marked uniformly. The Chief Examiner or one of the Commissioners reads the answers. Then a majority of those present at the meeting decides what credits shall be awarded each answer. In no instance does any one person mark the papers alone, except possihly in an examination in arithmetic, or spelling, or some other primary clerical qualification, where no partial credits are given; hut wherever partial credits are awarded, and the credit given is a matter of judgment, the rating is always done by at least two persons.

At the adjournment of the meeting, if all the papers have not been marked, they are again sealed up in a package, upon which the Commissioners write their names as in the first instance, and the package is locked in the safe, where it remains until the next session, where the same procedure is followed as upon the first occasion. When all the papers have been rated, the percentages are figured up. Then, the sealed package containing the identification sheets is opened, those sheets are in turn cut open, and the papers bearing the corresponding numbers are put together. The papers are then arranged in the order of their relative excellence, and the eligible list is adopted. I have thus gone into detail in explaining the methods of the Commission to show that every possible precaution is taken to insure an honest test of the comparative merits of the applicants.

When examinations are held for places requiring mechanical skill or professional knowledge, the Commissioners appoint Boards of Examiners who, under the general supervision of the Commission, have entire charge of the examinations. In other places, experts appointed to assist in Civil Service work are always paid a reasonable per diem, never less than $5.00, and frequently $10.00. Our Commission, however, has never had a fund of any sort to pay for such service, or in fact to pay for anything outside of the regular salary roll. It has been necessary, therefore, to solicit the assistance of experts, impressing upon them their duty as good citizens to give their aid gratuitously in the establishment of the Merit System. We have been very successful in thus obtaining the services of many men, all of whom have been chosen because of their high standing in their respective trades or professions. In addition, we have from time to time obtained gratuitous aid from many of the best physicians in the city who have conducted the medical examinations of the hundreds of applicants for appointment in the Police and Fire Departments. These medical examinations are very thorough, being even more severe than those to which army recruits are subjected. Our theory is that policemen and firemen should be practically physically perfect. The Chief of Police and the Police Commissioners, and Chief Sullivan and the Fire Commissioners admit that, as a class, the Civil Service men appointed to the Police and the Fire Departments are, without question, the best that ever wore the city's uniforms.

Before passing from the subject of examinations, I desire to say that the examinations held by the Civil Service Commission of this city taken as a whole, are of a much higher grade than any held for similar positions in other cities, or under the Federal Government. That statement is made deliberately after a close study of the requirements under other jurisdictions. For our work we fear no comparisons. This is not said in a vaunting spirit, but as a simple matter of fact. Moreover, all our examinations, as the law requires, are practical, and relate only to matters which will fairly test the relative capacity of the persons examined to discharge the duties of the positions to which they seek to be appointed.

In another respect, we are also ahead of other systems. We believe in the "open door." From the beginning, it has been the policy of the Commission to open its doors to every inquirer, and to give to the public every facility for examining and understanding its work.

Under the Federal Government, and in Eastern cities, an applicant is permitted to look at his own papers, after they have been marked, but he is not permitted to examine the papers of other applicants.

It is impossible, therefore, for one to ascertain to his own satisfaction, by a comparison of papers, whether credit has been awarded uniformly. Under our system, after the adoption of the eligible list, any applicant may inspect not only his own papers, but he may compare his answers and ratings with the answers and ratings upon the papers of every other applicant in the examination. This is done frequently, and the result has been satisfactory, both to the applicants and the Commission. Of course it involves much additional time and work, but it is time and work well spent. We invite and request public inspection, for we have felt that only by making the people acquainted with the work can they be made to take an interest in it, and it is only by awakening their interest that we can get them to understand the Merit System from a practical standpoint. That much gained, the rest is easy, for no man with a thorough understanding of Civil Service fails to appreciate it as a measure for positive good in municipal administration.

## CRITICISM AND LITIGATION.

No sooner had the results of the work of the Commission become evident by the certification of eligibles for appointment than endeavors were made

to estop further operations by litigation. Suit after suit was filed against the Commission, all seeking in one way or another to rip holes in the Civil Service provisions of the Charter. The Auditor was enjoined from paying the salaries of the Commissioners and the Chief Examiner, injunctions were fired at us by broadsides, and ever and again mandamus raised its haughty head to say us nay. But the work went right along. We fought back, and though we lost a large area of our territory—the County offices—the Supreme Court decided that we had a right to existence as a municipal institution, and could install merit men in the purely municipal offices. Then commenced attacks from another source. The bosses, disappointed in their attempt to kill us outright, started to whisper us to death by the circulation of stories of favoritism shown this or that applicant. All of these tales were as truthless as the usual campaign lie. Civil Service was never established anywhere without opposition. It has always passed through a siege of mumps and measles, but it has always come out strong and vigorous. Although we have fought off the most serious attacks upon the system, we have even now two important cases in the courts. The history of one will illustrate the way our work is blocked.

Last November, just a year ago, the Commission undertook to hold an examination for positions as Police Patrol and Ambulance Drivers. A suit in injunction prevented the examination. We won the suit. A new date for the examination was set. Then a second suit in injunction was brought upon exactly the same grounds as the first, and again the examination had to be postponed. The second suit was argued and submitted in the Superior Court last March—eight months ago—and we are yet awaiting a decision. Meanwhile, the injunction stands against us, and we cannot hold an examination for these places, which are filled by temporary appointees.

## THE WORK ACCOMPLISHED.

But this is not a record of hopes deferred, nor of work unaccomplished. Looking back over the past four years, the wonder is that despite the combined and powerful opposition of all the forces that endeavored to prevent the establishment of the Merit System in San Francisco; and notwithstanding the lack of sufficient funds and proper facilties, so much has been accomplished. We have registered 2782 laborers, and have received 7,308 applications for competitive examinations. The laborers are appointed without examination in the order of their application. All Civil Service appointees must be citizens of San Francisco, resident here for at least one year. Applicants as policemen and firemen must have resided in the city at least five years, and be not over thirty-five years of age. Every applicant is required to file vouchers signed by three citizens, each of whom states that he knows, of his own knowledge, that the applicant is of good moral character, of temperate and industrious habits, and in all respects is fit for the service he wishes to enter. Applicants for position as mechanics are required to file in addition a "Proof of Knowledge of Trade," showing that they have been employed in their particular trade. With the three vouchers as to character, the 7,308 applications represent 29,232 citizens who are directly and personally interested in our work; add to that number, the 2,782 laborers, and we have a grand total of 32,014 citizens, more than half the number that voted at the election last week who look to the Civil Service Commission to establish a true Merit System in the municipal departments of San Francisco. With more than half our voting population in direct touch with the Civil Service Commission, can any reasonable man honestly doubt that Civil Service will continue an integral part of our city government?

We have examined 5,301 applicants in 88 examinations; of the applicants examined 1,794 failed and 3,199 passed. From the eligible lists, over 1,000 appointments have been made, including temporary positions. In the offices of the Auditor, the Tax Collector, the Board of Public Works, the Board of Health, the Registrar's office, the Fire Department, the Police Department, and the Department of Electricity, all the deputies, clerks, stenographers and other clerical assistants, all the mechanics, electricians, inspectors, surveyors, engineers, superintendents, messengers, watchmen and laborers are men appointed from the Civil Service lists. Including the firemen and policemen who came in under the Charter there are to-day over 1,700 permanent positions in the city government, carrying annual salaries aggregating in round numbers $1,900,000 under Civil Service. There are also 400 positions, carrying annual salaries aggregating $292,000, filled by temporary appointees subject to Civil Service examinations. Of these temporary places, 80 are protected by the pending injunctions covering the Department of Electricity and the Police Patrol and Ambulance Drivers, and over 200 are minor positions, such as surgical dressers,

matrons, waiters, orderlies, ward tenders, dishwashers, bedmakers and general roustabouts in the City and County Hospital, the Alms House, the Small-pox Hospital, the Leper Hospital and the Emergency Hospitals. Many of these positions under the Board of Health carry salaries ranging only from $5.00 to $25.00 a month, with board and lodging. The assistant night gate-keeper at the County Hospital, for instance, is on duty from 6 p. m. until 7 a. m., and draws down $15.00 a month. It has been customary to permit convalescent patients to fill most of these positions, for the Commissioners see no practical way through competitive examinations of getting reliable men to occupy such menial places. In the East, and at Washington, similar positions are filled by what are known as non-competitive examinations; that is, a man who does his work well and is recommended by his chief, is put under Civil Service. But our Charter makes no provision for non-competitive examinations. In the East, also, janitors are either considered laborers, and are appointed without examination, or their places are enrolled under the non-competitive class. About fifty janitors are employed by the Board of Public Works, and we have yet to determine some practical method of submitting the 1,200 applicants for these places to a competitive examination. Examinations for these minor places are not without their problems.

Now, for a general comparison of the places of employment in the so-called county offices and other non-civil service departments, and the Civil Service departments. In all the departments outside our jurisdiction there are 1,897 places of employment, carrying annual salaries aggregating in round numbers $1,700,000. Under Civil Service there are 2,100 places, the annual salaries of which aggregate $2,200,000. Of the $4,000,000 a year paid by the city, or as the Supreme Court says, the city and county, to its employees, over $2,000,000 go to Civil Service men in Civil Service places. The Charter has therefore accomplished something by taking these places out of the lists of patronage seekers.

## NECESSITY OF EMPLOYMENT.

When Civil Service was established, it was thought that one immediate result would be the reduction of the number of employees in various departments, and a consequent saving of expense. It did not take much of a business man to figure that two good clerks, appointed solely because of their ability, could do as much work as at least three of the old-style men, and do it better. That is what the Commission thought, and early in its history it endeavored to prevent the employment of unnecessary people by withholding its approval of their appointment, upon the ground that their services were not needed. But this attempt at economy came to nothing, for we were informed by the City Attorney that "the Charter does not contemplate that the members of the Civil Service Commission shall be the judges of the needs of the various departments." That opinion is probably good law, but the effect has been that the Commission has been held responsible for the employment of what seemed to many people an unnecessary number of employees in Civil Service Departments. As a matter of fact, the Commission endeavored to prevent the swelling of the pay-roll, and tried to place things upon a business basis.

Nor has the Commission anything to do with the salaries paid in the big departments, such as the Board of Public Works and the Board of Health. In other cities, salaries being fixed by law, places of employment are classified according to salaries. But, under the Charter, the Board of Public Works and the Board of Health fix the salaries of their employees, and change them when they please. These things are mentioned, because they are not known generally, and further, because at our door has been laid the blame for some existing conditions, over which, as I have shown, we have no control whatever.

Another complaint made against the Civil Service Commission is that it does not prevent the participation of Civil Service appointees in partisan politics. The Commission has no power to do so. It can exercise only those powers given it by the law creating the Commission, and the Charter is silent on the subject of the participation of Civil Service men in politics. There are provisions prohibiting policemen, firemen and Deputy Registrars from taking active part in politics, but as to the great number of other Civil Service appointees, the law says nothing on this subject.

## METHOD OF CERTIFICATION.

The gradual growth of the Merit System is illustrated by the changes in our method of certification. The Charter says that in answer to each requisition, the Commissioners shall certify the name and address of one or more candidates, not exceeding three, standing highest upon the register for the

class or grade to which the position belongs. Originally, we certified three names. The employing officer was thus enabled to choose one out of three. Frequently, the third man instead of the first was taken. Again, we found that some heads of departments, anxious to get some particular applicant, would repeatedly pass over a much higher man. In this manner, it was possible for the highest man on the list to be dropped, as through the holes of a sieve, while men much lower were appointed. We changed the rule, so that after an applicant had been rejected eleven times, the head of the department would have to show cause for his rejection, or appoint him. Later on, we cut down the number of rejections to eight. The results continued unsatisfactory, and the rule was again changed. This time the Commission decided that each applicant in a set of three must be finally appointed or rejected for cause, and removed from the list, before any of the next set of three would be certified. That worked so well, that for many months thereafter every department under Civil Service appointed to each vacancy the highest man on the register of the class to which the position belonged. The Board of Health adopted a resolution that in all cases it would appoint the highest man; the Police and Fire Commissioners never asked for the certification of more than one man; the Registrar, the Tax Collector and the Auditor did likewise. So, every department being in accord, the Commission changed the rule again, and now only one name—the highest—is certified. Under all the former rules, the element of political pull or personal favoritism inevitably influenced the appointments. The Commission decided to establish appointment by merit only; hence the rule.

We consider that the certification of the highest applicant only, in answer to each requisition, is in accordance with the correct theory of Civil Service. The highest applicant in a competitive contest, like the winner of a race, is entitled to a prize, and the prize is the appointment. The competitive system is the very soul of Civil Service reform. Personal merit is thus made the sole test for appointment, and it follows that the appointment should be given to him who has demonstrated in the highest degree his merit and fitness. Civil Service thus carried out is properly termed the Merit System. The only department which has objected to the enforcement of the rule is the one from which the least objection was expected—the Board of Health. Our rule is the same as their own resolution—to appoint only the highest man. As long as they were working under their own resolution, they did just what we now want them to do; but as soon as we adopted the rule requiring them to appoint only the highest man, they objected. The objection, however, is of minor importance, because it will be soon overcome by proper adjudication.

## TRIALS AND DISMISSALS.

The Charter provides that "no deputy, clerk, or employee in the classified Civil Service of the City and County, who shall have been appointed under said rules, shall be removed or discharged, except for cause, upon written charges, and after an opportunity to be heard in his own defense." The charges must be investigated by the Commission, or by some board or officer appointed by the Commission for that purpose. The finding of the Commission, or the finding of the appointed board or officer, when approved by the Commission, is certified to the Department in which the man is employed, and there enforced forthwith. The rules of the Commission provide a complete plan for these trials. Considerable time has been given to trials, and as a result, many men have been dismissed. Nor is their dismissal any reflection upon the work of the Commission. No student of Civil Service contends that the man who obtains the highest credit in a competitive examination is, for that reason alone, the best man for employment. We do hold, however, that there is probable cause to believe that the highest man will be the best man in office. We say to a department: "Here is a man who can do your work properly," but it is for the head of the office to see that the man does not loaf on his job. Some of the brightest men are also the laziest. While the best workman may not always be at the top in a competitive examination, the Merit System certainly does raise the standard both of the employees and of the work. The general average under the competitive system is much higher than under the spoils system, and that is all that is claimed for Civil Service.

## ACTUAL SAVING DUE TO CIVIL SERVICE.

These considerations lead me to refer to the work done by our men in two departments in particular—the offices of the Registrar and the Tax Collector—where the actual saving in coin due directly to the introduction of the Merit System has been far greater than the entire cost of maintenance of the Civil Ser-

vice Commission for the past four years. In a letter addressed to the Commission under date of July 1st, 1903, Registrar Walsh says:

"The Merit System as applied to this Department has worked marvels in the line of improvement. The public have received every attention due them from their paid servants and at a most remarkable decrease in the expense to the taxpayer. If there is one branch of the municipal government that has demonstrated the merits of Civil Service by actual results, it is this department. The public probably come more in contact with the Election Bureau than with any other, as all citizens must register, if they desire to vote, at least once in two years, and I believe all must admit that they are treated with proper courtesy in this department.

That this is due to the fact that the clerks hold their positions through their fidelity to duty, and not from political favoritism, no one will deny. As regards the economy of public funds, an examination of the cost of conducting this department for the last ten years is the best testimony to the advantage to the city from the Merit System.

"The average cost per year under the Consolidation Act in the years in which elections were held was about $200,000. Since the adoption of the Charter, and the operation of Civil Service, the cost has been reduced to an average of $113,000 per year. This in spite of the fact that we have held from two to four elections each year.

"This is a most gratifying condition, and is undeniably due in a large measure to the Merit System of appointment. No matter how good are the intentions of an official who has the distribution of patronage, he will be frequently, unwittingly, led into making appointments of persons that he would hesitate to employ in his private business, with the consequent additional burden to the taxpayer, from their failure to give adequate service. The opportunity of appointing political or social friends being removed by the application of Civil Service regulations, has resulted in a material reduction in the number of employees, and a consequent reduction in expense.

"In conclusion, I will say that I believe the citizens, generally, are best able to judge as to whether the system has worked the improvement which I have claimed, and I say without fear of successful contradiction, that the deputies and clerks certified by your honorable board to this department, give as good satisfaction and accomplish as much work, and in some instances more, than any similar number of men employed in private capacities.

We have here, then, an official statement from the Registrar of Voters that a saving of $87,000 a year has been effected in his department alone since the introduction there of the Merit System, and that this gratifying result is due largely to Civil Service. The Registrar has since stated that fully fifty per cent of this $87,000, or $43,500, was saved on salaries for the office staff, and that the Merit System was entitled to all the credit for this $43,500. That sum covers, with $3,500 to spare, the entire expense of the Civil Service Department, since its organization, including the appropriation for the present fiscal year.

Similar results were effected in the office of the Tax Collector. Mr. E. J. Smith, the Tax Collector, entered office two years ago, opposed to Civil Service. He belonged to the old school, and said candidly that, instead of continuing Civil Service man, he would much prefer to control the patronage of the office. But Smith is a reasonable man, and he promised to give the Merit System a fair trial. The result is that he is a convert to the cause. When the Finance Committee of the Board of Supervisors was considering the budget last July, the Tax Collector said he could get along with $6,000 less this year than last. The Supervisors were surprised, but they took his word for it, and the appropriation for his office was reduced $6,000. In August last, the expenses of his department were $2,500 less than during August of last year. The Tax Collector admits that he has been able to effect this saving because the Civil Service men know their work, and do it rapidly and intelligently. On account of the recent decision of the Supreme Court, in the matter of the increase of the State tax rate by the State Board of Equalization, the work this year in the Tax Office has been greatly increased. But Mr. Smith has asked for no increase of funds. He intends to "make good," and with his Civil Service men he will do so. Recognition must be made of the Tax Collector's excellent business management, but he readily admits that if his deputies and clerks had been the products of political patronage, not only is it certain that the saving of $6,000 would have been absolutely impossible, but a demand for an increased appropriation would have been more than probable. The saving effected in the Tax Collector's office alone will cover two-thirds of the entire cost of maintenance of the Civil Service Commission during the present fiscal year. These figures show that the Civil Service Commission has justification for its existence.

## NEED OF AUDITOR'S CO-OPERATION.

In one very important respect, the work of the Commission is wholly dependent upon the co-operation of the Auditor. The Charter provides that, to prevent stoppage of public business, or to meet extraordinary exigencies, the head of any department or office may, with the approval of the Commissioners, make temporary appointments, to remain in force not exceeding sixty days, and only until regular appointments can be made. These "extraordinary exigencies" occur with extraordinary frequency, and the Commission has disapproved many temporary appointments. The Auditor is notified of these disapprovals, and if, acting thereon, he refuses to issue warrants to the disapproved men, they quietly quit and await another "extraordinary exigency." But if the Auditor refuses to recognize the action of the Commission—and this has happened—and issues the warrants, notwithstanding the disapproval, the temporary appointees continue in office, in place of Civil Service men, and opponents of the Merit System laugh at the weakness of the Civil Service Commission. The only way to enforce the disapproval of the Commission is by a law-suit, of which we have had more than our share. In other cities, the pay-roll of every Civil Service Department goes through the Civil Service Office before it reaches the Auditor or Comptroller, and that officer cannot approve a single warrant unless it bears the "O. K." of the Commission. This method gives the Commission control of the situation. Such an addition to the powers of the local Commission would greatly strengthen the system.

## IN CONCLUSION.

In conclusion, I wish to repeat that Civil Service has come to stay. It is now firmly established; the beneficial results of its operation are apparent to any student of municipal conditions; it has passed the experimental stage, and is now growing in San Francisco with the strength of vigorous youth. The graduates of the Merit System are equal to any class of men of similar grade in the world. What is now needed is not only the latent, but the outspoken and vigorous support of all the believers in the Merit System, and studious investigation by those who are open to conviction, to the end that Civil Service ideas may be disseminated throughout the State, with the result that, in not so long a time, the employees in all branches of the State Government, by virtue of the will of the people, shall be appointed on account of their fitness for office, and that alone. As for the Civil Service Department of this city, I wish to say that we are always open and ready to receive advice and suggestions; we are presiding over a great governmental work, and we want the aid of all good citizens in securing success. Ignorance of its objects and operations is the great obstacle to a proper understanding of the Merit System. What we want is that every man who believes in Civil Service will not keep his knowledge and belief to himself, but will tell his neighbors of what he knows; will argue with his doubting friend; will convince the scoffer that in this reform movement there is equal opportunity for every citizen to secure advancement, while for the city there is the first chance it has ever had to obtain honest and competent employees to do its work. The Civil Service Commission is engaged in pushing forward a great movement. Its full results may not be seen to-day, nor yet to-morrow, but that they will be realized is certain—as certain as is that future time when San Francisco shall raise her head proudly among the great cities of the earth, conscious that in the integrity of a system by which honest and meritorious citizens are selected as her assistants, lies the greatest safeguard of her moral and material welfare.

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# Report of the Section.

At the meeting of January 13, 1904, the papers of Messrs. Murdock and Moran were referred back from the Section of Social Welfare with the following memorandum:

Bearing upon the question of the greater or less expense of government by reason of the civil service regulations, the Federal Civil Service Commission says:

Officials in charge of collecting the customs duties of the Government have emphatically stated that there has been a saving of about one-fourth in the cost of gathering this part of the public revenue. If their estimate is correct, this item alone shows a saving of nearly $2,000,000 per annum. The Commission is

satisfied that if the Internal Revenue Service were conducted with the same regard for the civil service law and rules as the customs service has been, a very large saving would also be shown in the cost of collecting that part of the revenue. It cannot he expected that as efficient an administration can be ohtained where other than business consideration determine appointments, which should be hased upon a purely husiness organization devoted solely to the collection of public revenue. The increased efficiency which has heen obtained under the civil service law in the railway mail and postoffice services is perhaps the most conspicuous and best known to the public. There is no doubt that several million dollars are saved annually by reason of the classification of so large a proportion of the employees of the Postoffice Department, notwithstanding its great increase of work since the passage of the civil service act. The other parts of the service also present an excellent showing as to the economy secured from the increased efficiency which has characterized the employees since their classification.

* * * The importance of the question of efficiency in the public service can scarcely be overestimated, as the aggregate of salaries annually paid to the officers and employees of the executive hranch of the service is already more than $100,000,000. A conservative estimate, based upon official reports of public officers, indicates as a result of the operation of the civil service rules a net saving in salaries paid of at least 10 per cent, or about $10,000,000. Furthermore, the annual expenditure of several hundred millions of dollars depending largely upon the recommendations of the subordinate officers and employees shows the great importance of efforts to increase the efficiency of the working force of the Government, in order that more economical results may follow the higher intelligence and ahility displayed hy the thousands of classified officers and employees.—Report of Civil Service Commission for the fiscal year ending June 30, 1898.

The numher of positions in the executive civil service at the time of the report was 178,884, of which 79,988 were governed hy the civil service rules and 98,896 were unclassified.

The salaries of the classified employees amounted to $72,255,390, while the unclassified positions—or those not governed by the civil service rules—reached a total of only $27,461,664. Th salaries of postmasters took about 60 per cent of this last-named sum.

The report of the Civil Service Commission for the year ending June 30, 1897, gives the following facts:

"In practice the law has proved to he a constantly exerted and effective force in the direction of economy. The great actual saving in the plan devised hy the civil service act for selecting persons for employment can he appreciated only by a comparison with the methods of selection that prevailed before the Commission was estahlished, when persons were often appointed to the service and then removed to make room for others whose chief recommendation was that at the time of appointment they happened to have greater political influence. This was one of the principal causes of the sweeping changes under the patronage system, even where one administration succeeded another without change of politics. An investigation at the New York Custom House showed that during the five years preceding the classification of that office under successive Collectors helonging to the same political party there were 1,678 removals. For the period since the complete classification of the office, or for the two years ending June 30, 1897, there were but 101 removals and 60 resignations. In the entire civil service, during the past five years, at least 75 per cent of those who occupied unclassified or other positions exempt from examination were removed from the service, while during the same period in the classified competitive service not more than 8 per cent of the separations occurred, not including necessary reductions in the force. Experience has shown that frequent changes lessen the general efficiency of any service. The stability in positions filled hy competitive examinations has given increased efficiency, while the constant changes in the unclassified and excepted positions have been destructive of efficient work. Considering the few changes in the service under the merit system and the wholesale removals under the patronage system, the economy and efficiency of the one stand in striking contrast to the extravagance and inefficiency of the other.

"That the maintenance of the Commission is directly in the interest of economy is clearly shown hy the statistics prepared last year (1896) in connection with the government service in Washington, D. C. In these statistics the growth of the classified positions was compared to the growth of the unclassified positions, and it appeared that since 1883 (the year of the organization of the Commission) the unclassified positions which have heen suhject to political

control have increased in number 37 per cent, and in cost 43 per cent, while the classified positions subject to examinations have remained at a standstill, practically the only increases in their number having been made by the extensions of the rules to cover positions previously unclassified. Had tbe classified positions increased in the same proportion as the unclassified positions increased up to the time of their classification, an extra yearly expenditure for additional salaries in Washington alone of more than $3,000,000 would be required.

"A table recently prepared at the Commission from the official registers shows tbe growth of clerical positions in Washington from 1873 to 1883, and from 1883 to 1896. From 1873 to 1883, covering the ten years immediately preceding the enactment of the civil service law, the number of clerks in the seven executive departments and the Department of Agriculture increased from less than 3,000 to 5,523, which was an increase of more than 2,200, or 66 per cent; while from 1883 to 1896, or during thirteen years of the merit system, the number of classified clerks in the eight executive departments decreased from 5,523 to 5,312, a reduction of 211, or over 3 per cent.

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At the November meeting, the members present having generally expressed themselves strongly in favor of the views expressed by the authors of the papers, the President called upon John P. Young as one who might possibly present some different views. Mr. Young not caring to respond at length at the late hour, he subsequently, at the request of the Section of Social Welfare, prepared the following paper indicating some evils and drawbacks which, as it seemed to him, must always be connected with a permanent tenure of civil service positions. Mr. Young does not wish to be understood as opposing any "merit system," but thinks it is unwise to ignore any imperfections which may exist. Tbe following is Mr. Young's paper, which was read at the meeting of January 13th, 1904:

## The Evils of a Bureaucratic System.

In the United States the free trader makes his assaults on the protectionist citadel under the banner of "tariff reform"; in Great Britain, the protectionists wbo are seeking to overturn the existing fiscal system are standing shoulder to shoulder as "tariff reformers." If both sets of reformers win out; if protection is substituted for free trade in England, or Cobdenism takes the place of protectionism in the United States, will a reformation have been effected in each case?

The question is not a frivolous one. It is put to bring out into bold relief the fact that it is the custom in modern political and economic discussion to introduce the methods of theologians. In Great Britain, during many years, it was the habit to denounce as economic heresy every view at variance with that of the Manchester school; any suggestion having the slightest tinge of protectionism was pronounced unorthodox, and the high priests in colleges and out of them, were always ready with bell and book—especially the latter—to eternally damn the poor fellow who did not think as they thought he should on the question of tariffs.

There is no denying that a certain advantage attaches to this mode of polemics. It generally has the effect of ranging on the orthodox side all those who wish to be thought right minded, but who are too lazy or incapable of thinking for themselves. Self-constituted leaders of opinion say a change is necessary and dub it reform, and at once all the vast army of the would-be good throw up their hats in the air and shout "hurrah for reform!"

But intent does not always stand for accomplishment. There is an old adage about hell being paved with good intentions, and there are others equally pertinent—all of which point to the fact tbat the popular pbilosopher is not unobservant, and that he has long since found out that there is a vast difference between promise and realization. But in spite of abundant cautionary wisdom the people go on accepting any coin offered them, provided it has stamped on it the word "reform." Now this is not an altogether bad attitude. It shows that the great heart of the people is " true to Poll," and that there is no foundation for the pessimistic assumption that moderns are corrupt to the core. But while it may carry such an assurance it will be admitted that the emotional quality it indicates is hardly dependable as a foundation upon which to rear a safe sociological or economic structure. We should hardly think of going to the gallery gods for sound rules of theatrical criticism; nor

should we lean any more trustingly on those who propose to deal with political and fiscal matters as though they were mere ethical considerations.

If we admit that the latter are to govern, we shall soon see the bulwarks of modern society swept away; if we refuse to profit by the lessons of experience, and those which we may glean from the pages of history, and depend wholly upon the guidance of abstract justice, we shall speedily revert to the conditions which we were once wont to regard as slavery. Practicality must be our load star. The world cannot afford to chase rainbows. Whenever it does it is led into destructive morasses from which it can only emerge after great pain and suffering.

There are many who believe that the so-called civil service reformers are leading the people into dangerous paths, and there is much to justify their belief. Those who think thus do not impugn the motives of the advocates of a revolutionary system, nor do they deny that those arrayed against change embrace within their ranks the worse elements of modern society. It is unfortunately true that many of the political thugs are bitterly hostile to any movement which interferes with the control which they have exercised in the past; but despite this, the fact remains that there is a mountain of argument, all of which points to the innovation we seem disposed to accept, almost without challenge, as more dangerous to our liberties than the predatory habits of small fry politicians could ever prove.

It has been intimated, almost claimed, in a paper read before this club that the founders of this government, and its early administrators, had they foreseen the struggle for place, would have guarded against it by making provision in our fundamental law for a system somewhat similar to that which is now being called into existence. But there is no foundation for such an assumption. It is absolutely negatived by the attitude, practice and writings of those who flourished in the formative state of our Union, and by the sentiment of the people which had crystalized into an intense dread of permanent tenure.

Doubtless all of my hearers can find quotations that will seemingly contradict this assertion; it would be strange if such were not the case, for it is the practice of men to magnify the evil that stares them squarely in the face, while overlooking the menace which the future contains. Nevertheless, it is true that up to a certain period most Americans considered rotation in office as the safeguard of their liberties, and, for a long period, would have regarded with distrust and suspicion any movement even remotely suggesting the creation of an establishment which would give them a set of permanent officials.

It is the fashion to hold a Democratic statesman responsible for the annunciation of the doctrine "To the victors belong the spoils," but long before Marcy made use of the unfortunate expression the propriety or impropriety of making political changes in office had been under discussion, and while many good and able men recognized that the system had attending evils, they were disposed to regard them as less threatening than the incomparably greater evil of a bureaucracy. As late as the time of Taylor "rotation in office, provided good men are appointed," was regarded by Whigs as sound doctrine, and while there were many disposed to criticize wholesale removals on the occasion of a change of administration, few ventured to assail the principle which condoned if it did not demand action.

The genesis of civil service "reform," when closely investigated, does not support the assumption of the modern advocates of the system that the demand for it was inspired by a yearning for practicality and honesty. Take the most prominent of the early advocates of reformation, Charles Sumner, and examine the motives which seem to have prompted his course, and what do we find? We discover that he made a great row because a distinguished literary man, Nathaniel Hawthorne, was disturbed in his position as Collector of the Port of Salem. Sumner's opposition to the change was not based on the claim that Hawthorne was fitted to hold the position, and that he had administered it ably, but solely on literary grounds. And when he was subsequently appointed by Pierce to the lucrative position of Consul at Liverpool, Sumner did not applaud the appointment because Hawthorne was likely to become a valuable assistant to American enterprise, but solely because he thought his gifts as a writer should be recognized and literature encouraged.

The contest over Hawthorne's appointment is cited merely to make clear the fact that those foremost in the fight for change did not regard the matter from the utilitarian standpoint. Mr. Sumner, when he gave his ardent support to his friend Hawthorne, would have been greatly embarrassed if some one had suggested that the author of "The Scarlet Letter" should be subjected to a merit test. He probably knew that the distinguished writer in such a contest would

stand little chance if pitted against a lot of young men fresh from college. He merely thought of him as one who had won distinction in literature, and that he would therefore creditably fill the place to which he was appointed.

But it is scarcely fair to judge things by their origins. The best product of modern civilization is said to have had an anthropoid ape for his remote ancestor; but the evolutionary processes of centuries has improved him in many particulars, while leaving him deficient in otbers. In the main, bowever, man shows a marked advance over his relations who once inhabited tree tops, and it is bighly probably that the civil service "reformers" have also moved ap and are a distinct improvement over their early apostles, who seemed to regard the flesh pots of office with favor, provided they were permitted to select the cooks who were to stir and savor the mess.

So it does not really matter very much whether the motives of the "reformers" will bear inspection or not; and on the other hand it is not a question whether those who oppose change are good or bad. Results alone can determine tbe wisdom or unwisdom of a policy, and they are not to be measured by the experiences of a day; nor can they always be distinguished by the careless observer. Minute investigation must be brought to the task, and the investigators must be broad-minded and uninfluenced by the glamour of an ideal. They must not see what they wish, but that which bas existed and which really exists. In short tbeir judgment must be molded, not by the desire to make things conform to a preconceived notion of what is rigbt, but to what may be best for society as a whole.

Approached from this standpoint the question of fixed tenure of office takes on a different aspect. Thus viewed, we cannot regard it as a simple proposition to bring tbe affairs of a nation, a State or a community to a business basis. There is back of the matter something more momentous, and that is the perpetuity of our political institutions. That these latter can only endure so long as the people take an active interest in National, State and municipal affairs is indisputable; and it seems equally plain that this endurance cannot be hoped for if the incentive to interest is removed.

It may seem like an extreme statement of the case to say that the mainspring of patriotism, national impulse or civicism is selfishness. There is evidence which seems to controvert this view, but in the last analysis it will be found that men always act—when permitted to do as they please—as their interests dictate. It is certainly true that this is the case in all countries where representative democracy has been highly developed. And logically enough, the cbief factor in arousing interest has always been the personal one. This is not strange when the circumstances are considered. It is inconceivable that it should be otherwise. Until all men are put on the same plane of intelligence there will be leaders and followers, and until that time arrives the hopes of those wbo place dependence on the referendum must remain an iridescent dream.

Our legislators and reformers persistently disregard this fact, and we see the result in the frequent miscarriage of our special elections at which propositions are presented which the mass of electors is incapable of understanding and pronouncing judgment upon. Incivicism is usually charged against those who stay away from the polls on the days when voters are called upon to decide questions affecting the welfare of the State or municipality, but it is not improbable that abstention from voting is due rather to the feeling of incapacity to judge than to indifference. At any rate we have this concrete fact to go upon—and it should not be disregarded in a country with democratic proclivities—that it is only elections in whicb the personal element is tbe predominating one that anything like a full vote is called out. On all other occasions, no matter how vitally important, it is impossible to induce more tban a third of those entitled to the suffrage to turn out and register an opinion.

This would seem to indicate that we are firmly wedded to the idea of representative government, and that most of those who are privileged to exercise the important function of passing judgment upon civic policies prefer to relegate the duty to men specially fitted for the work. This attitude carries a frank admission of the desire for leadersbip, and it should be seriously considered by those who think that reformation in politics may be effected by still further weakening the once pronounced tendency of Americans to take an active interest in political matters.

That the growth of bureaucracy would have such an effect can scarcely be denied. Our distinguished ex-Mayor and fellow clubman, Mr. Phelan, inadvertently admitted as much in his remarks on the evening when the papers of Messrs. Murdock and Moran were under discussion, when he touched upon the fact that an elective officer under a system which provided him with a

thoroughly competent corps of clerks, whose efficiency would be increased by the permanency of their tenure, might practically be a mere figure head without inflicting an injury on the public. I am not quite sure that Mr. Phelan claimed that this would be a desirable state of affairs, but the impression that his contention left on my mind is that he believed that a well trained bureau would administer affairs much better than an untrained man chosen by the people and held responsible by them for the proper performance of the duties of the office he was called upon to fill.

It is indisputable that men who know how to do things can do them better than those who do not know how to do them, although it is not always certain that those who can do things well will do them well. But is it not perilous to assume that we are under the necessity of making provision for elective figureheads? Will not the bureaucratic system thoroughly undermine the confidence of the people in their ability to manage their affairs? In short, will not the outcome of bureaucracy be the destruction of representative government? Before attempting to answer these questions it will be well to touch upon the anomaly which an effective force of clerks and an inefficient head suggests. Advocates of a bureaucracy claim that their aim is to introduce into civic affairs sound business methods; but is it conceivable that such a result may be achieved by conferring authority upon men incapable of directing those placed under them? What corporation; what private concern of any kind pursues such a course? Is it not always the aim in every well conducted establishment to secure the highest class of superintendence? Is there one among my listeners who would entrust the conduct of his business to a man who would be at the mercy of his subordinates because of his ignorance of what they are required to do? Is it not true that in all enterprises the efficiency of the workers is almost wholly dependent upon the capacity of the manager or director?

If this is the case in private life; if competent direction is absolutely necessary to secure the best results in the management of our own affairs, why should it be supposed for a moment that the business of the public may be managed successfully without intelligent direction. The answer made to this question is that it is impossible under the democratic representative system to secure proper men to fill the important elective offices. But that is not true. It is true that we often fail to get them at present, but that is not so much the fault of the system as of the failure of the people to recognize that competent superintendence cannot be procured for beggarly wages, and that thoroughly efficient men will not, except in rare cases, devote themselves to the public service for compensation insignificant by comparison with that habitually paid by corporations or business men who realize that only through proper management can economy be secured.

But even if a doubt existed regarding the possibility of the people to tempt capable men to take public office, free men should hesitate to place shackles upon their wrists for the sake of fancied gain. There are some things worse than inefficient public service. It is highly desirable that our municipal affairs should be excellently managed, and that conveniences should be multiplied and the city beautified; but comforts of this kind may be dearly purchased. If the price paid for them is bureaucracy they are dear indeed.

It has been said of bureaucracy that it is the "only form of government for which the philosopher can find no defence." Professor James Albert Woodburn of Indiana University, who quotes the saying approvingly, says: "All modern governments, including America, are more or less corrupted by it. Under such a system few interests are left to private individuals, and the interference of the State is carried to an extreme excess. Everything is regulated by officialism. The officials become a class outside of and above the people. They inflict upon the people the evils of neglect where government agencies are needed; of too much interference where the people should be left alone; often of bad management and corruption, and of domineering and autocratic conduct on the part of the officials, and of consequent humiliation to all citizens who have to come into personal contact with authority."

That life tenure must inevitably bring about all these and worse results seems plain. The lesson of experience teaches us that the subordinate who is intrenched in his position cannot, as a rule, be depended upon to work with the same zeal, or act as courteously as he who knows that failure to give satisfaction may cause his removal. The advocates of life tenure in the civil service assume that the provision that office may be held only during good behavior is a sufficient safeguard; but the proviso and the phase fail to assure, for we know from observation that a man in a public place can only be dislodged by efforts which the community is not ready to put forth. The machinery of the law does not

answer the purpose; it only works one way and that is for the security of the incumbent.

We need no modern instance to warn us against the evils of bureaucracy. Its drawbacks are made sufficiently manifest in our own and other countries, hut we can hest study its effects by tracing them through the career of a nation that has run its course. Many reasons have been assigned by various writers to account for the decline of Rome, but none seems so plausible as that which assigns it to the destructive effects of bureaucracy. There was a period in the history of that great nation in which the policy of short tenure seemed to be a fixed principle. While it existed the right of extending the term of office belonged to the commuuity alone and was always exercised by it. The first invasion of this right occurred when the Senate hy decree prolonged the term of the Commander-in-Chief. That was well along in the fifth century of the nation's existence as reckoned in its annals. How much this step toward autocracy contrihuted to the disorders which finally culminated in the domination of the Caesars it would he rash to guess; hut it is impossible to escape the conclusion that it was a mighty force, for we find that the most significant outcome of the destruction of the republic was fixity of tenure. Ou this point Mommsen discourses as follows:

"The system of administration was thoroughly remodeled. The Sullan proconsuls and propraetors had heen in their provinces essentially sovereign and practically subject to no control; those of Caesar were the well-disciplined servants of a stern master, who from the very unity and life tenure of his power sustained a more natural and more tolerable relation to the subjects than those numerous annually changing petty tyrants."

The result of this change of policy is succinctly described hy the same historian, who tells us that for the more general and more important questions the imperator became his own minister, "as he controlled the finances by his servants and the army by his adjutants; as the old republic state magistracies were again converted into municipal magistracies of the city of Rome, the autocracy was sufficiently estahlished."

The establishment of this autocracy will find plenty of justification in the arguments of modern civil service "reformers." No fact seems to he hetter agreed upon by historians than that which accords to Caesar the distinction of having effected great reforms in the finances and administration of Rome. And some of his successors share with him the praise. Gibbon grows enthusiastic over the orderliness of the accounts of Octavius Augustus, and his admiration of the administrative efforts of other Emperors is unbounded. He paints an alluring picture of the prosperity of Rome during the reign of the able Caesars, hut he cannot conceal the fact that the liberties of the people had been undermined, and that Romans were afterward practically governed by eunuchs, "that pernicious vermin of the East," who since the days of Elagahalus had infested the palaces of the Caesars.

Mankind regards with contempt the victims of a physical impairment who attained such extraordinary powers in ancient Rome; but, singularly enough, modern "reformers"—save the mark—regard with equanimity the proposition to make political eunuchs of office-holders by forbidding them to take part in political affairs. They urge the propriety of counting them into "things" apart from the rest of men so that they, like the vermin of the East, may have no higher aspiration than to earn their bread and butter. But such a course may not be taken with impunity. The political impotent can no more be relegated to a state of harmlessness than the eunuch. If he is denied the right to share the affairs of men he will resort to intrigue.

Despite the prettily turned phrases in our own and other languages, there is a reasonable doubt that the product of a high civilization is always willing to pay the cost of liberty. It is tiresome to do sentry duty all the time, and as a consequence "eternal vigilance" soon goes out of fashion among peoples who love their ease. Instead of cheerfully standing guard they study out methods which will permit them to ahandon the ramparts and take their comfort. This heing the case, it is almost hopeless to resort to the appeals which fire the hearts of men in those periods when liherty is estimated at its true value. After the Roman armies were filled with foreign mercenaries the military spirit decayed. Atrophy soon follows disuse. When the subjects of the Caesars were saved the trouble of fighting hy their accommodating masters they soon lost the habit and ultimately the ability to fight.

In disuse we shall find the menace to our liberties. If we refuse to exercise the duties which freemen must undertake, if they wish to retain even a semblance of liberty; if by creating a bureaucracy we render it unnecessary, perhaps impossible, to elect men to manage our affairs, what rights shall we have left that are worth struggling for? If all we care for is to be governed on the most economical terms possible, why not entertain the idea of starting a benevolent despotism? Perhaps an advantageous contract might be made with an aspiring "man on horseback" who would undertake to run the country satisfactorily upon an infinitely smaller expenditure than at present.

As between an arrangement of this kind and a thoroughly developed bureaucracy the odds are all in favor of the former. The latter is the most costly form of government in existence. Organization to effect economies is highly desirable; but when the talent to organize is employed to elaborate a system which shall make as many places as possible for people burning with desire to serve their country for a consideration; when the organizers devote more thought to the brass mountings and the outer ornaments of the engine than to the effective working parts, it is a source of waste rather than of saving, a curse rather than a blessing.

That we are rapidly approaching the condition which bureaucracy always produces must be plainly apparent to any one who will study the growing figures of the cost of administration of Federal, State and Municipal affairs. It is manifestly absurd in such a consideration to attempt to institute a limited comparison. We must deal with the subject in a large way, keeping in mind the fact that the worst vice of the bureaucratic system is its tendency to expand that with which it has to do, and that the propensity to elaborate and perfect—using the latter word in its finicky sense—is a fatal impediment to the simplicity and directness which make for true economy.

We have a concrete exposition of the tendency in the growth of the civil expenditures of the Federal Government since the opening of the last century. In 1800 the per capita cost to the people of the United States for being governed was 25 cents. During the ten years following it was reduced to 18 cents. After 1810 it remained at 30 cents until 1840, when it increased to 48 cents. In 1860 the per capita cost of civil expenditure had grown to 98 cents, but it must be borne in mind that the discovery of gold in California and Australia caused a tremendous inflation of prices which will account for a large part of the expansion. But no such explanation is forthcoming for the great advance after 1870. In that year the civil disbursements reached $1.19 per capita; in 1900 they had mounted to $1.76; in 1902 they stood at $1.75.

In an article on increased Federal expenditures by Professor C. J. Bullock, which appeared in the March, 1903, "Political Science Quarterly," the writer is credited with the remark that "Upon the whole, during the first seventy years of our national existence, the Federal Government had been administered with remarkable economy, and at an expense that generally was less than $2 per capita." The professor sought to emphasize the view that militarism is at the bottom of the rapid growth of expenditures. The figures support his contention showing as they do enormously enlarged disbursements for the army and navy; but he omits to take into consideration that it is in the rank soil of bureaucracy that the noxious weed of militarism flourishes best, and that in all probability we should have been content with a modest military establishment if we had not accustomed ourselves to the idea that the country is rich enough to support a parasitic growth of enormous proportions.

That a vast part of our civil service is of this latter character is attested by the fact that it now costs the people of the republic six times as much per head to keep their accounts and administer their civil affairs as in 1830. It may be answered that the wealth of the United States has grown even more rapidly, but that would not be regarded, even if true, as a satisfactory rejoinder to the charge that we now expend three and a half times as much per capita on our civil establishment as we did for all purposes in 1840; nor will it satisfy those who demand an explanation of the fact that civil expenditures have mounted from $84,354,000 in 1886 to $138,465,000 in 1902.

It was Dr. Watt who said:

For Satan finds some mischief still
For idle hands to do.

If I have misquoted the learned and acute divine I hope some pious member of the Commonwealth Club will correct me before this paper goes to print, but if the quotation is all right I wish to employ it to enforce the idea that a too effective organization of our civil service must prove as destructive as the codling moth is to an apple when its operations are not interfered with. I suppose that the insect

nuisance referred to if troubled with a thinking apparatus must regard its work with great pride, and that when it has utterly absorbed all the tissues of a nice juicy Newton Pippin, it thinks that it has thoroughly justified its existence. In the same way the heads of departments in a thoroughly elaborated civil service may think that they are serving the public when they make their machine work so perfectly that it draws the last cent out of the tax-payer's pocket.

But whether they think so or not, there is no ground for challenging the assertion that the result is that described. It could not be otherwise. There is an irresistible tendency toward overelaboration whenever a high degree of organization is effected. In the conduct of private business this propensity is measurably checked by the desire to make the balance appear on the right side of "Profit and Loss"; but in the management of government affairs by bureaucracy there is no such restraint. The more zealous the bureaucrats become in their endeavor to realize their ideal of a perfect machine the more they are disposed to pile on the useless and merely ornamental. And in doing so they are responsive to an instinct which impels men to regard outward show as of more consequence than mere utility, and the outcome is the same in all cases. In ancient Rome, in the picturesque if exaggerated language of Gibbon, the management of the affairs of the state in the days of the Byzantine Emperors required more people than there were tax-payers to support them.

It would occupy too much of your time to attempt to present the proof that no visible improvement of the morale of the civil service has resulted in Europe of in this country from permanency of tenure. It would not be impossible, however, to present evidence from British sources to show that corruption in its rankest form has taken possession of many departments of the government. If the doubters respecting the efficiency of the system had to rest their case on the revelations of the workings of the British War Office during and since the Boer war it would be a tolerably strong one. Some time since a curious defense of the shortcomings of our "kin beyond the sea" appeared in an American paper devoted largely to civics. The editor said: "Our politics are demoralized by corruption as English politics are not. * * * The reason for this is that the parasites of English politics regard themselves and are regarded by the public as justly entitled to their plunder. No moral miasma proceeds from them to contaminate the community." And then he went on to illustrate how robbery of the masses may be reduced to a fine art:

"If, for example, half the earnings of a community were given to one of its members as a matter of right, both given and taken feeling that the recipient was justly entitled to what he got, that community might be an exceedingly virtuous one. But if only a small fraction of the income were received by one member of the community through scandalous 'boodling' the whole community might be demoralized."

According to the view of the editor of "The Public," from whom this quotation is derived, the attitude of a community towards corruption makes a great difference. If the tax-payers are ready to hold up their hands and be robbed by duly accredited bandits no harm will result; but if the robbers are mere politicians, chosen by the vulgar and roust-about methods which the representative system engenders, then the effect is truly demoralizing. Perhaps such a conclusion is in accord with the refined notions of a civilization in full flower, but plain men who are stripped of their property to support an extravagantly conducted government will make no fine-spun distinction between the results produced by the British civil service, which J. Thorold Rogers declared was marked by the retention of sham office, and used to quarter the young scions of the nobility, and a system which provides for rotation and a chance for all.

Before dismissing that part of the subject which deals with the evils of fixed tenure it is advisable to touch upon a phase of civil service which has occasioned trouble in England and threatens to do so in this country. The bureaucratic tendency to organize for the purpose of advancing the interests of bureaucracy is referred to; and attention is called in this connection to the fact that severe measures had to be resorted to in the United Kingdom to repress a movement of the postoffice officials and clerks to compel the people to raise their wages. It is unnecessary to discuss the compensation of the postal employes of Great Britain; it may be inadequate; they may deserve twice as much as they get; but that is not the question. It is: Can the people afford to permit their servants to dictate the terms on which they are to be employed? If this right is accorded them and they exercise it, in what essential particular will the civil

service employes differ from the Praetorians who made their bargains with the Caesars?

Apropos of this there is a curious occurence related which has been the confessed despair of historians. Reference is made to the so-called "rebellion of the workers of the mint" during the reign of Aurelian. There is a letter extant from this Roman Emperor in which he said: "A sedition within the walls has just now given birth to a very serious civil war. The workmen of the mint, at the instigation of Felicissimus, a slave to whom I had entrusted an employment of finances, have risen in rebellion. They are at length suppressed, but 7,000 of my soldiers have been slain in the contest, of those troops whose ordinary station is in Dacia, and the camps along the Danube."

At one time, when laboring under the hallucination that tampering with the monetary standard brings great evils in its train, I imagined that this so-called rebellion of mint-workers, which it took an army to suppress, was a protest against the contraction of the currency, but since the people at the polls have decided that such changes as that involved in the abandonment of silver as a monetary metal are of no consequence, it has occurred to me that the rebellion, the suppression of which cost the lives of 7,000 of Aurelian's soldiers, and God knows how many of the lives of the people, for the august letter-writer did not dwell on that part of his performance, was an uprising of the civil employees of the government led by the mint workers. This is only a surmise, but it is fully as plausible as that of Gibbon, who admits that the story is almost inexplicable, and after doing so makes an awful mess in trying to explain it to his readers.

With this historical allusion I bring my screed to a close; not because material for illustration or arguments have given out, but for the sufficient reason that the club might eject me if the paper were spun out to greater length. If the privilege accorded to Senators and members of Congress of having put into print all that they think and crib were mine, several bulletins of the transactions of the Commonwealth Club might be filled. But our finances will permit nothing of the kind. Perhaps they will be unduly strained in taking care of this effusion; but the desirability of showing that there are two sides to the civil service question is the justification for its production and ought to excuse its lack of thoroughness and merit.

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## Discussion by the Club and Guests.

JOHN E. QUINN—No friend of the merit system who understands the frailties of human nature will claim that the system is perfect; nor will he claim that it is possible to make an eligible list that is always ideal in its entirety. But it cannot be denied that with all its faults and shortcomings, it is a vast improvement on the old "spoils system."

The most radical opponents of civil service cannot prove the existence of a successful private business or quasi-public corporation which is not conducted on the strict basis of the merit system; and I doubt if these same opponents of the system who are in business on their own account would tolerate any other than the merit system in the transaction of their business.

Now, if it is a fact that the system is good for the private citizen, why should it not be desirable in the public service? Should not the unfortunate and overburdened taxpayer be entitled to some consideration and relief? Or is he always to be made a beast of burden for the benefit of the ward politician and the spoilsman?

Now, all opponents of civil service are not ward politicians, nor are they spoilsmen; many of them are in favor of good government, and some of them are willing to work for it.

One of the arguments used by these good people against civil service is that it creates a bureaucracy or official class, which, according to their ideas, is diametrically opposed to the "genius of our institutions." But the great bulk of the opposition comes from the men who believe it intereferes with the time-honored principle of "To the victor belongs the spoils."

It is true civil service bars out many of the "workers"; it curtails the powers of the political manipulators; it destroys the time-honored custom of frequent rotation in office; it excludes many a poor deserving fellow from a $100 job who could not earn $25 in any other occupation; it places merit above party fealty; it demands eight hours' honest labor daily instead of do as you please; it gives the taxpayer a chance for his life, which he rarely gets in San Francisco; and it allows the head of the office to attend to his duties instead of having to

devote most of his office hours to listening to the importunities of the bosses seeking places for their henchmen.

There are other reasons why civil service is desirable. First, because the candidate for examination knows that he must depend entirely on his own merits to be successful. Second, the man who passes a successful examination and secures a position through that examination, instead of through political influence, knows that he must attend strictly to his duties to retain his place. Third, he knows that if he makes himself efficient his chance for promotion is good, and this is another and important incentive to him to do his best. Fourth, when the head of the office knows that he must depend on the eligible list to made appointments, he does not feel obliged to stuff his department with unnecessary employees to please the "organization." He has every inducement offered him to make a record in his department for the benefit of the taxpayers and he also knows that he has the right to suspend any one of his staff who will not faithfully do his duty. This, under the old system, he was not always privileged to do, if the delinquent had a strong political backing.

Under the merit system, it would be impossible to reduce any department of the city government to the disgraceful condition that the County Clerk's office has been in during the past two years. If an example were needed to illustrate to what utter degradation the spoils system can reduce a public office, the above will suffice. In this connection, I do not hesitate to say that there is not another city in the world that would tolerate for a day such disgraceful proceedings as have taken place in the County Clerk's office under the late incumbent.

More difficulties were encountered in introducing civil service into San Francisco than in any other city of the country. It was purely a local law, the San Francisco charter being the only one in the State to recognize the system. It was not fortified by the protecting arm of the State, which was the case in all the Eastern cities where it was introduced. The executive officers of this commonwealth, from the Governor down, were opposed to it, and to show the temper of the Legislature on the subject, a bill, whose purpose was to nullify the provisions of the charter on civil service, was introduced by Senator Tyrrell of this city. The bill was passed and promptly signed by Governor Gage. Yet the opposition to civil service from outside sources was as nothing when compared to the opposition in this city. I well remember that, during the two years I was a member of the Civil Service Commission, no possible means were overlooked to discredit the work of the Commissioners. They were harassed by appeals to the courts, every effort to introduce the system was blocked by mandamuses and injunctions to stop its work and prevent its examinations, all kinds of insinuations were spread broadcast claiming that the examinations were not conducted fairly, that there was partiality shown certain candidates on the marking of their papers, that it was useless to compete for a position unless one was a friend of the Commissioners or the power behind them. It was also intimated that the Commission was simply a creature of its creator, whose only duty was to register his will.

Now, one would suppose, if all these reports were true, that the Commissioners would deny admission to the public to investigate the records of their examinations, etc. But it was not so. Every act of the Commissioners was recorded in black and white and was always open to the inspection of the public.

Every elective officer of the city government, with one or two exceptions, was opposed to civil service, notwithstanding that each and every one of them had, before election, solemnly pledged himself to his party to support it.

Yet with all this opposition to overcome, there were held, during the first two years of the charter, sixty-one examinations, which covered, with few exceptions, all the principal employees in the classified service.

During all this time, with the exception of Mayor Phelan, the Merchants' Association and one or two daily papers, there was no effort made by the friends of civil service—notwithstanding the fact that they constituted at least seventy-five per cent of the people—to protect the system and encourage its introduction. Such is the moral cowardice and indifference of the good people of San Francisco. These same people are all desirous of good and efficient government—if they can have it without inconvenience to themselves.

My purpose in enumerating a few of the many difficulties of introducing the merit system in San Francisco is to show that if the system has not proved as satisfactory here as its friends could wish, it is not the fault of the civil service. No reform movement can be successfully carried out unless its friends take an active interest in its welfare. To do this, requires constant vigilance on their part. Much also depends upon whether the Mayor and the men he ap-

points as Civil Service Commissioners are conscientious and honest in their endeavors to introduce and protect the system.

But whether or not the present or future Mayor or his Commissioners are in favor of the principles of civil service, there is no movement of reform that is so absolutely indestructible, when once introduced, as the merit system, and no matter what the opposition may be, it is bound to triumph in the end.
does, but because the spoils system tends to the ruin of bright young men and the corruption of the elector, etc. But what a man knows is no proof of what he will do, and it is largely chance whether the eligible list contains effectives or ineffectives. For that reason the power of removal for stated cause should be

EDWARD F. ADAMS—I agree with Mr. Young that a permanent civil service tends to become a bureaucracy, working for the extension of its own members, influence and compensation. I believe this, because I see it in some of the Federal services which happen to come under my observation. I see, also, continual contests between the different bureaus for what our friends the labor union men call "jurisdiction." And some of these contests are very bitter. But all alike struggle for increase of authority, to which end the representatives of each as they visit different sections, earnestly promote petitions and "resolutions" of influential bodies urging the Federal Government to increase its appropriations, and incidentally the personnel of the bureaus, to do work much of which we had better do ourselves, even if it is not done so well. These gentlemen are all admirable men, earnestly believing that the measures which they promote are for the public good, and I speak understandingly, for I have sometimes myself been active, if not helpful, in aid of these promotions; yet I think this increasing tendency to look to the Federal Government for help at Federal expense undermines that sturdy local self-reliance and effectiveness which is the pride of American tradition. The Federal civil service is our greatest centralizing agency, and with all respect to the statistics which have been put upon our records, I cannot believe that what we call the merit system tends to reduce the cost of civil service. I think our local system fundamentally unsound in charging the Civil Service Commission with the duty of enforcing the law against other departments. It leads to unseemly contests between co-ordinate branches of the government, in which public opinion becomes confused, and enables, as we are now seeing, a Mayor who wishes to break down the system to do so, by appointments of Commissioners, without direct responsibility. The civil service laws, like all other municipal laws, should be enforced by the Mayor, who is directly responsible to the people. If they choose to elect a bad Mayor, they must stand the consequences. You cannot go behind the people.

The spoils system has one advantage in that its rotations turn out their victims upon the world while they yet have the ability to shift for themselves, while in any permanent civil service the time comes when we have to consider what shall be done with the old men and women. That is a burning question now in Washington and in the School Department of this city, and the cost of the pension system, which in the end humanity will probably compel us to adopt, will be part of the cost of the "merit system." Nevertheless, with my eyes wide open to all the imperfections of that system, its evident tendencies and probable results, I strongly favor appointments according to marks as opposed to appointments according to pull, because the latter tends not only to the ruin of bright and energetic young men, but to the corruption of the electorate itself, which is the most dangerous of all social evils.

EDWARD BERWICK—I have been wondering whether Mr. Young thinks a government of the people and for the people and by the people possible. He would almost make us believe that we have only liberty to choose between bosses and bureaus. It has appeared to me that the employees of the Federal Government appointed upon competitive examination have been hard-working, competent men. The system seems to me successful.

CHARLES WESLEY REED—I do not think Mr. Young's point that it requires the element of personal interest in appointments to get voters to the polls well taken. We have the same number of elective officers in San Francisco under the charter and the merit system that we had under the consolidation act and the spoils system, and there has been no change in the ratio of votes cast to the whole number of electors. It is true that we get light votes on amendments to the charter or the constitution and even on proposals for bond issues, and it is true whatever the method of appointment to subordinate offices. As for life tenure, that is no essential part of the merit system. It is not how long men hold their employment, but how they are appointed that is important.

C. E. GRUNSKY—I do not wish to let the opportunity go by to bear testimony to the efficiency of at least some of the employees who passed the civil service examinations in this city and were appointed on their record. Those who are serving in the City Engineer's Department, of which I have the honor to be the head, are certainly all that could be expected or desired. They are faithful and efficient and have reason to be, for a $1,200 a year salary is the equivalent of an investment of $30,000 at 4 per cent, and by attention to their duties they protect that investment and assure the continuance of its income. I do not think that the method of appointment has anything to do with the tendency to work for the increase of power and influence to which Mr. Adams referred as existing in the Federal civil service.

JAMES D. PHELAN—Mr. Young has made special reference to something I said at the November meeting, when civil service reform was the theme. I remember having urged, as a matter of practical city government, that a trained staff in a municipal office, which the reformed civil service provides, is something as advantageous to the incoming head of the office as to the public; that very often untrained men are elected to positions which require experience, and that a trained staff saves the public service from disaster. The business goes on because the staff is efficient; that if every recurring election involved a revolution in clerical positions, it would take the whole term of the official's incumbency to properly qualify the clerical force, whereas, under the civil service, when elected he finds it already qualified. Mr. Young draws from this the erroneous conclusion that the staff is more important than the office and that an official head is superfluous. The elected official, however, is in control of his office and the staff works under him and by his direction. He has the power, under the civil service rules, to suspend for a period not exceeding thirty days, or to prefer charges against his subordinates for inefficiency, and if proved and made good, the person complained of may be dismissed by the Civil Service Commissioners.

We must not underestimate, as Mr. Young apparently does, the functions of the head of an office. It is he who gives the office its character, its policy. For instance, in this crisis of the city's government, when one department is endeavoring to legally install subordinates in defiance of the Civil Service provisions of the Charter and the rules of the Commissioners, the City Auditor, by refusing to audit illegal salary warrants, can command the situation and save the Charter from violation. So it will appear at once that important as the staff is, it lacks the essential qualities of the chief. It is simply the instrument, or tool, by which he works and gives expression to his official acts. You can substitute nothing by civil service for the discretion which belongs to the public official. He is either a good officer or a bad officer, by the use of that discretion which he may exercise within his jurisdiction.

But a gentleman who has just spoken, undertook to answer Mr. Young's objection that by putting subordinates under civil service rules, the elector loses his interest in the election, by saying that such is not the fact, and making a plausible argument to that effect. But I will go further than the gentleman and accept Mr. Young's statement that the elector will lose his interest, in a large degree, when the officer for whom he votes has little patronage. We know the methods of political elections; candidates make promises of places, and the people who receive such promises—they and their friends—take a much larger interest in the election of the candidate. But, I beg to inquire, what is the character of that interest which is awakened by a contemplation of spoils? Does it better qualify the elector for the use of the elective franchise? No; his interest is basely selfish, and in working for his candidate he is indifferent to considerations of the common weal. His sole business is to get his man in office, and that man, as a reward for services, shall pay him in patronage. That is one of the evils of the spoils system against which we contend, and I say the greater the interest a man of that kind the less qualified is he to vote intelligently and with proper discrimination. His judgment is clouded.

Under the regime of civil service, the elector will vote for the Auditor who will best serve the city, and the elective franchise will be raised to a higher plane. A recent writer has said that Democracy has failed because the people don't know their interests, and therefore don't vote their interest. We should remove every consideration of personal advantage or patronage from the voter. We should not cloud his mind with things irrelevant, and again, I repeat, the contemplation of spoils warps his judgment, as it possibly would yours or mine.

The reason why a large vote is not cast at elections for charters, constitutional amendments and bonds is principally because the days of special elections are not legal holidays, and the mechanic and business man are chary of their time; and then, I am free to confess, that the personal element is a large and influential one in bringing out a vote, with or without patronage in contemplation.

Mr. Young's complaint concerning the expense of the government now and at the beginning of the century has been answered by other speakers and by the data left upon the table by Mr. Walcott. I would recall to Mr. Young the simplicity and economy of the earlier days by referring to the fact that President Jefferson asked, with considerable hesitancy, for an appropriation for the Lewis and Clark expedition, which started from a point, I believe, near St. Louis, and penetrated this Western country, trading with the Indians, and providing for about one hundred and fifty men. The appropriation asked for and granted was $2,500.00. The times have changed, and we have changed with them. A strict enforcement of the civil service would, however, bring us nearer to the simpler life, greater economy and purer politics of the days of Jefferson—and speed the day. For these reasons, among others, I am in favor of the preservation of the merit system of public employment.

H. U. BRANDENSTEIN—I think that Mr. Young's charge that the merit system tends to create a bureaucracy, if true, is not a charge against the system itself, but against our particular form of it or its administration. I agree with Mr. Reed that life tenure is no essential part of the merit system. What we are after is to assure that political work in behalf of individuals shall not be paid for from the public treasury, and that is a matter of method of appointment, not duration of tenure.

C. A. MURDOCK—I am very glad that we have had the other side of this question presented, but I do not see that Mr. Young has connected the unquestioned evils of bureaucracy with the merit system. I am sure that in San Francisco the operation of the civil service provisions of the charter has been of marked advantage. The men appointed from the eligible list have been competent, industrious and courteous, and the public service has shown increased efficiency at decreased cost.

GEORGE W. DICKIE—Mr. Young's paper was interesting, but I do not see that it has much bearing upon the problem of securing good service in public offices. Any reasonable method of appointment in public or private service must of necessity be a "merit system." I was amused to hear Mr. Grunsky say that the Civil Service Commission was able to get him better assistants than he could get for himself. That has not been my experience or observation. I have had a great deal to do with the employment of men in connection with the business in which I am engaged, and I know that if from any cause the authority of our foremen to employ and discharge their men becomes impaired production falls off very rapidly. I have recently had occasion to compare the outturn of Federal civil service employees side by side with that of those on precisely similar work, but in private employment and subject to prompt discharge for inefficiency. There are usually a number of Government draftsmen at our works, for whom we provide a room, and we also have a large number of our own. I should think that our own employees turn out more work, man for man, than the Government draftsmen. I do not see how effective service can be attained or should be expected, if the responsible supervising official cannot employ and discharge summarily according to his judgment.

BENJAMIN IDE WHEELER—I think we are under great obligations to the author of the paper this evening, in that he has set forth with great clearness the possible objections to the civil service system, and has thrown into high relief the important proposition that the maintenance of popular institutions demands political interest on the part of the people. I agree with him most heartily that republican institutions cannot be made to attain practical success unless the people spontaneously interest themselves in the issues presented at elections. I feel, however, that a discrimination must be made which I do not find

has been made in the discussions of this evening; a discrimination between what I call the expert or business service of the state and political service. We shall always have political offices, that is, offices held by men whose business it is to consider policies and formulate issues. On the other hand those who engage in expert service, that is, service for which special fitness is required. and engage in purely business activities, will naturally have nothing to do with this formulation and presentation of questions of policy, and will be selected purely for their ability to do the work required in the special business. The maintenance of political interest among the people is not dependent upon having these expert positions perverted into political positions. On the contrary, such procedure acts always toward confusing the popular mind rather than clarifying it, and consequently operates toward dulling the proper and healthful political interest. The merit system must not be allowed to stand or fall according to any one method of establishing the fact of merit. An examination may be one way of testing. but there are others.

At the conclusion of the discussion the following resolution was offered:

Resolved, That this Club hereby expresses its approval and support of the merit system of appointment to the civil service.

Upon the call of the roll it was adopted by the following vote:

Ayes—Adams, Anderson, Berwick, Burk, Davis, Denman, Denicke, Frankenheimer, Harrison, Jennings, Garceau, Keeler, McCormick, Marks, Murdock, Meyer, Phelan, Quinn, Rickard, Reed, Todd, Wheeler (B. I.), Wheeler (W. R.), Weinstock, Wickson, Young.

Noes—None.

After concluding the discussion, upon motion of Charles Keeler a special committee of five was appointed, consisting of James D. Phelan, William Greer Harrison, Charles Keeler, E. A. Denicke, William Denman, to consider and report upon the proper measures to be taken to improve the administration of the San Francisco civil service.

# SWAMP LAND RECLAMATION

TRANSACTIONS OF THE

COMMONWEALTH CLUB
OF CALIFORNIA

VOL. I SAN FRANCISCO, OCTOBER 15, 1904 No. 4

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# OUR GREAT RECLAMATION PROBLEM

## The Swamp and Overflowed Lands of the Sacramento and Lower San Joaquin.

At the meeting of the Club held on May 11th, 1904, the following paper was read by Edward F. Adams and referred to the Section of Commercial Interests:

I have heard of the managing editor of an important daily journal who regarded it as an essential prerequisite to the production of a good editorial that the writer should know nothing whatever about his subject, because he would then write without any prejudices. Having looked at over ninety of the statutes which the Legislature has passed in relation to the reclamation of swamp and overflowed lands—and I do not doubt that a good many got away—and fifty-four sections of the Political Code dealing with the subject, and read a good many of both; visited some of the "reclaimed" islands and basin lands in summer, and gazed over the waters flowing over them in the winter; read all the official and other reports dealing with the subject which I could get hold of, and carefully examined the accompanying maps; and last and worst, looked over the digests of all the decisions of our Supreme Court—and read many of them—which have been made in the course of the innumerable lawsuits which have grown out of our attempts at reclamation—there are eighty-seven cases cited, if I have counted straight, in the latest edition of the Political Code—I am of the opinion that I should satisfy the requirements of that managing editor. In the present condition of the reclamation service I am convinced that the more one studies it the less he will know about it, for he will be lost in a morass of infinite detail. In my judgment, I shall render most service to the Commonwealth Club by making as clear a statement as I can of the history of our dealings with this subject, followed by a brief statement of the conclusions reached by myself as to the economic relations existing, or which ought to exist, between the State and the owners of these overflowed lands, and their respective obligations and duties in respect to them. In the compilation of the history I have been indebted to the authors of most of the formal documents which have been published to whom credit is given for what I have used, and for valuable assistance in securing other data to Messrs. A. B. Nye, Private Secretary to Governor Pardee, who has taken a great deal of pains; A. L. Shinn of Sacramento, who is thoroughly versed in the legal history of reclamation in this State, and M. A. Nurse, Chief Engineer under the Commissioner of Public Works. Mr. Robert Hickmott has also kindly read the manuscript.

I have exercised great care in examining and quoting from documents, but as the work has necessarily been done at such odd moments as I could catch, and it has simply been impossible to go over it and check everything up, there are presumably some errors. The economic history, however, is more nearly complete than any hitherto printed, and I have sought to make it accurate. I think it will assist members of the Club in forming some intelligent judgment upon a matter of vital importance to the State in regard to which there is very little knowledge except among those in actual danger of loss from the devastation of flood waters.

For the personal conclusions which, in accordance with the rules of the Club, I have submitted for reference to the appropriate section as a basis on which to make a report for the consideration of the Club, there is of course nobody to blame but myself.

### SWAMP LANDS CONVEYED TO THE STATE.

On the 28th day of September, 1850, the President approved an Act known as Section 2479 of the Revised Statutes, which reads as follows:

"To enable the several States (but not including Kansas, Nebraska and Nevada) to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of the swamp and overflowed lands made unfit thereby for cultivation and remaining unsold on and after the 28th day of September, A. D. eighteen hundred and fifty, are granted and belong to the

several States respectively in which the said lands are situated; provided, however, that said grant of swamp and overflowed lands, as to the States of California, Minnesota and Oregon, is subject to the limitations, restrictions and conditions hereinafter named and specified as applicable to said three last-named States, respectively."

Section 2480 provides as follows:

"The proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively so far as necessary, to the reclaiming said lands by means of levees and drains."

The other restrictions and conditions referred to in Section 2479 are contained in Sections 2485, 2486, 2487 and 2488, and are of no importance in the present inquiry.

## THE OBLIGATION ASSUMED BY THE STATE.

The acceptance of this grant committed the State to the reclamation of the granted lands, so far as that could be accomplished by reasonable effort directed by sound judgment, and in particular pledged the receipts from sales of such lands by the State to the purpose of their reclamation so far as they were necessary and so far as they would go. With the unspeakable folly of Congress in conveying these lands to the disposal of authorities so absolutely destitute of any conception of the proper way of dealing with them as our State Legislatures, this inquiry has nothing to do.

Lest the foregoing statement in regard to the obligation of the State in this matter be thought merely an expression of individual opinion, I transcribe a portion of the opinion of the Supreme Court of California in deciding a case in which an owner of swamp lands, purchased from the State and paid for, resisted an assessment for reclamation purposes on the ground that he did not wish his land reclaimed, had never consented to be included in any district organized for that purpose, or to be assessed for reclamation purposes. In this case (Kimball vs. Reclamation Fund Commissioners, 45 Cal., p. 344, January, 1873), the Supreme Court said:

"In accepting this grant the State was bound to carry out in good faith the objects for which it was made, and the Legislature has at all times recognized the binding force of the obligation.

"It was under the last-named act (of April 27th, 1863) that the Plaintiff acquired his title and he must be deemed to have acquired it with a full knowledge of the terms, conditions and purposes on and for which the Grant to this State was made by the Federal Government. He must be held to have known when he took the title, that the State in accepting the Grant, had assumed an obligation to reclaim the land, and that it had already inaugurated a system for that purpose. He was bound in Law to take notice of the public Statutes above mentioned and must be deemed to have accepted the title in subordination to the paramount duty of this State to cause the land to be reclaimed.

"It would practically defeat the whole cause of reclamation contemplated by Congress, if the mere sale of land to private proprietors should have the effect to exempt it from the power of the Legislature to reclaim it. Such a result would be in flagrant violation of its duty towards the Federal Government.

"When the Plaintiff purchased the land with a knowledge that it was incumbent on the State to reclaim it, and that a general system for that purpose had already been inaugurated, he must be deemed to have taken the title with a knowledge that the State might afterwards modify the system, and to have consented to hold the title in subordination to these modifications. He must be presumed to have consented that if the proceeds of the State should prove insufficient to accomplish the reclamation he would submit to the imposition of such burdens on the land to effect the object as the Legislature in its wisdom might deem expedient."

(Cited to same effect in Lamb vs. Reclamation District, 73 Cal. 133 and Kings Co. vs. Tulare County 119, Cal. 516.)

This is a proper place to remark that this decision seems to place it in the power of the Legislature, and perhaps make it its duty, to deal with these lands in any way in which from time to time it may seem best to the Legislature for the purpose of accomplishing their reclamation, assessing the entire cost if it be deemed proper, upon the lands thus reclaimed.

## AREA OF SWAMP LAND RECLAIMED.

As a result of the Federal Act of 1850, there was granted to the State of California from one and three-quarters to two millions of acres of swamp land, or from 2,300 to 3,100 square miles. (Marsden Manson, Vol. 5, Transactions of the Technical Society of the Pacific, 1888, page 85.) Of these only those in the Sacramento and Lower San Joaquin Valleys lying above Collinsville in Solano County, and New York Landing in Contra Costa County, are factors in what may be called the problem of the Sacramento. They embrace the islands in the Sacramento and San Joaquin, the adjacent Swamp lands, and the lands of the five "Basins." As this paper will not in any way deal with questions of engineering, it may perhaps be stated here for the benefit of those not familiar with the subject that the Sacramento River never did, and probably never can be made able to carry within its natural bed the waters poured into it in seasons of normal and greater than normal rainfall. Like other sediment carrying streams flowing through low-lands, the river by ages of overflow built up along its banks above the delta a strip of land higher than the land further away from the stream, but at certain points, determined by natural causes, there were—and are—depressions in these banks through which the floods pour into the lowlands beyond, remaining there until by slow drainage as the high waters recede and permit it, they find their way back into the river at a lower point. The depressions in which these overflow waters lie during a great part of the summer are known as "Basins," including the Yolo, or Yolo-Solano, Basin, (mean elevation above low water in Suisun Bay, 12 feet); American Basin, (mean elevation, 20 feet); Sutter Basin, (mean elevation, 22 feet);; Colusa Basin, (mean elevation, 35 feet); Butte Basin, (mean elevation, 65 feet). Elevations estimated by Grunsky, quoted by Manson. (Transactions Technical Society, Vol. 5, page 88.) Some of this land is too low to admit of complete drainage by gravity. It could only be accomplished by levees and pumping. In addition to these basin lands there are the islands of the San Joaquin and Sacramento delta, and the lands subject to overflow along the lower San Joaquin and its tributaries. The total amount of land within the area considered in this paper, subject to assessment for reclamation purposes and from which the revenue should come wherewith to pay the cost of reclamation and maintenance thereafter is estimated as approximately 750,000 acres. (Report of Commissioner of Public Works, 1894, page 9.) Of this area 632,041.04 acres are included in 41 "Completed" Reclamation Districts as per tables compiled under the direction of the Commissioner of Public Works, and published on page 4 of a document issued by the Reclamation and Drainage Association organized in 1902. Assuming the accuracy of the estimated total of 750,000 acres*, there remain outside organized Districts 117,959 acres either still belonging to the State, or in private ownership. A considerable part of this was doubtless originally high land, made subject to overflow by the raising of the river bed by the deposit of silt and debris. Over 320,000 acres of this land have an elevation of less than 10 feet above low tide in Suisun Bay.

If by reclamation of such a body of land its value, subject to a maintenance charge of even $1.00 per acre, which would be excessive, could be made to average $100 per acre, which is probably quite within reason, the actual value of the bare land would be $75,000,000, and with the buildings and personal property which would soon be found present, probably that would not be too high an estmate for the assessed valuation. The direct gain to State and local treasuries, therefore, as the result of reclamation, would be the taxes on the difference between that assessment and the present assessment, whatever it is. Assuming that difference to be $50,000,000—I have no idea what it now is—and that State and local taxes were $1.50 on one hundred dollars, the public gain would be $750,000 per annum forever, which is the income at 4 per cent. on $18,750,000. In addition to this would be the increased assessment in cities outside the reclaimed area following increased business and population.

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*In reference to this estimate, Mr. A. L. Shinn of Sacramento writes me as follows:

This estimate of the quantity of swamp and overflowed lands does not cover the entire subject matter. In addition to the land returned as swamp and overflowed lands there is a very large quantity of land that is actually overflowed at times, which should be considered and included in any general plan of reclamation. The State has undoubted right to control the reclamation of any lands within the State, whether the same were granted by the Government as swamp lands or not.

I have made a careful examination of the quantity of land that will be benefited by reclamation on the Sacramento and San Joaquin Rivers and find that the quantity will approximate 1,000,000 acres.

## DEBRIS IN THE RIVER BED.

One factor which may be found to affect the equities which will have to be considered is the effect upon the river bed of the deposit of silt and debris as the result of mining in various forms, agricultural operations, and erosion caused by deforestation and the establishment of sheep and cattle trails to be formed into ravines by the rushing water. It is evident that by as much as the river bed has been raised by these means, by so much artificial drainage is made more necessary and more difficult.

It happens that there are data of a survey of the river bed made in 1841, before any of these agencies were at work, and there have been various surveys made since. Inspection of a blue print which is before me as I write, on which are shown the profiles of the bed of the Sacramento from Suisun Bay to Sacramento City as they existed in 1841, 1878 and 1894-5, shows that while in a few places the river is quite as deep as it ever was—in a few spots even deeper—there is almost a continuous deposit of debris of varying depth from Sacramento to Collinsville. The Commissioner of Public Works (Report of 1895-6, page 17) states that the river bed at Sacramento in 1895 was 8.5 feet above the bed in 1849, which corresponds with statements elsewhere in one of the reports as to the rise of the flood line on the higher lands with a corresponding increase in the area of land flooded. J. P. Price, Chief Engineer for the Commissioner of Public Works, estimated in 1896 that the capacity of the river had decreased, since 1854, by no less than 40 per cent. The problem which we have to face is the restoration of the river to its original carrying capacity by removing the silt, and perhaps increasing it by removing the shoals which originally existed, and improving the alignment, and then, after making the river convey all that it can be made to carry, providing other means for taking the excess floods to tide water by other channels. There is no disagreement among engineers on this general proposition, nor any serious disagreement as to the methods by which it must be accomplished on the assumption that the matter is to be thoroughly dealt with. It is only when makesbifts are proposed for relieving congestion at this or that spot that engineers disagree

## HISTORY OF RECLAMATION LEGISLATION TO 1868.

With the foregoing statement of the problem to be dealt with, and the magnitude of the interests involved, and the legal and equitable obligations resting upon the State and upon the land owners, we may proceed to examine the manner in which the State has discharged its trust. The Legislature has enacted a large number of Statutes dealing with the subject. A summary of the essential features of those which have determined for the time being the varying policies of the State follows, with a brief statement of the administrative work under them.

I. Act approved May 1st, 1851. (Page 409, Statutes 1851.)

Granted 640 acres of Swamp land on Merritt Island to John F. Booth and David Galloway, provided they should reclaim the land, bring it under cultivation and report results to Legislature. Unless this was accomplished within three years, the Act to be void.

I find no record of anything done under this Act, and presume further search would disclose only a more or less interesting story of misfortune.

II. Act approved April 28th, 1855. (Page 189, Statutes of 1855.)

Allowed Swamp lands to be taken up for $1.00 per acre, with no agreement to reclaim, or upon credit of five years with obligation to reclaim one-half within five years or forfeit claim. No provision for any reclamation fund; tide lands and lands within certain distances of specified cities excepted from operation of Act. Limit to be sold to one person, 320 acres.

III. Act approved April 21, 1858. (Page 198, Statutes of 1858.)

Swamp lands allowed to be taken up at $1.00 per acre, cash, with no agreement to reclaim, and title to be patent equivalent to a quit-claim deed. Limit to one person, 320 acres. Proceeds to be paid into a State Reclamation Fund. No salt marsh to be taken up for six months except by owners of adjoining "arable" land, except in Counties of Napa, Solano, Yolo, Contra Costa and San Joaquin. Lands near certain cities excepted from operation of Act. Act of 1855 repealed.

In this Act there is by the creation of a "Reclamation Fund" Statutory evidence that the Legislature recognized that the State had an obligation to reclaim the land.

IV. Act approved April 18th, 1859. (Page 340, Statutes of 1859.) Amended Act of 1858 by increasing the limit permitted to be taken by one person from 320 to 640 acres. Price $1.00 per acre, or 20 per cent. cash, balance on five years. Limitation to one-half mile of frontage on any navigable stream or bay. Land to be taxable after purchase. Proceeds to go to State Reclamation Funds. No agreement to reclaim required.

This Act was in force until 1861, and like the Acts of 1855 and 1858 imposed no obligation on purchasers to reclaim. The patents issued were the equivalent to a quit-claim deed of the State. This would apparently leave them, however, subject to the obligation to reclaim, the State simply transferring its responsibility, so far as it could do so, to the purchasers. Either these laws were not attractive, or the State was not ready for reclamation work, as but a small amount of land was sold, and that, presumably, where reclamation was easy. I have not deemed it worth while to ascertain the amount of land sold under these Acts in the district under consideration.

V. Act approved May 13th, 1861. (Page 355, Statutes of 1861.) J. C. Pemberton, William J. Horton, B. B. Redding, T. T. Bouldin and A. M. Winn appointed a Board of Reclamation Commissioners to hold office for two years and until their successors were elected by the Legislature in joint session. Upon a petition of owners of one-third the acreage of any tract of swamp or overflowed lands 'capable of reclamation in one body" Reclamation Commissioners to cause their Engineer to survey and make plans and estimates, and if probable cost appear not to exceed $1.00 per acre, plus any sums which may have been subscribed and paid in, to advertise for bids and let contracts. Any existing works found available to be accepted and paid for. Authority granted to enter upon lands without consent of owners. No district organization provided, but contiguous basins of land to be reclaimed are spoken of in the Act as in subsequent Acts as "Districts." Act applies to all swamp, tide and marsh lands in the State. Two Hundred Thousand Dollars appropriated from the State Reclamation Fund from funds therein or to be paid in.

Under this Act the Commissioners organized by the election of A. M. Winn, President, and W. S. Horton, Secretary. They appointed no Engineer of their own, but acted with reference to each district upon the advice and estimates of the District Engineer, who was, however, appointed by the Board. Owners wishing to reclaim applied by petition to the Commissioners to be recognized as a district. Each petition was numbered in the order of its reception and the number of the petition was the number of the district. A large number of alleged districts were formed and allowances to them for reclamation purposes amounted, with expense of Commission, during the period of the existence of the Commission, to $567,-483.86. There were apparently no means of compelling unwilling owners within the District to contribute to the cost of reclamation. In 1863 new Commissioners were appointed, Mr. Redding only being retained. This Act was ultimately declared unconstitutional and void, in so far as it empowered Districts organized thereunder by owners of one-third the lands to tax all the lands in the District. (People vs. Reclamation District, No. 551, 117 Cal. page 114.)

The Commission of 1861 made four reports, the last dated November 15th, 1865, after which time it seems to have gradually "petered out" into a state of "innocuous desuetude." In its early years it certainly displayed great zeal for the welfare of the State, for in its second report, 1862 (unpublished) it reported that it had surveyed and segregated 1,018,142 acres of "Swamp" lands, of which only 161,892 acres had been previously discovered by the Federal surveyors, "So that we have saved," says the report, "956,250 acres of the best swamp lands, which, if sold at $1.00 per acre and interest for one year, would add to the Swamp Land Fund $1,051,875." This reminds one of the story in Webster's Spelling Book of the girl taking a basket of eggs to market on her head, and soliloquizing as she walked on the color of the dress she would buy. She fell down and smashed all the eggs, just as the Land Office refused to allow the segregation. The land was evidently too "good." In the same report the Commission stated that every district organized was in possession of, or could get, all the money received from sales of swamp lands within its boundaries, but that no District had the money to reclaim itself. As to the supplementary Act of 1862, providing for taxation in excess of the $1.00 per acre paid to the State for reclamation purposes, the Commission states that it had introduced an element of "discord," many land owners objecting to being taxed, claiming that as their land

was used for stock farms, reclamation was not needed or that they would prefer to risk an occasional flood rather than bear the expense of levees. In other words, according to the Commission, these purchasers having got, as they thought, a good title to their lands, proposed to absolutely repudiate the obligation to reclaim under which they had taken it. Of course, they were not allowed to repudiate, but the disposition to do so caused a great deal of litigation. In its final report the Commission accounted for $3,343.48 paid as costs of lawsuits. At the date of its last report, the Commission stated that 54 Districts had been "listed," and gave an aggregate of $275,490.72 as expended in reclamation work by five districts to that date. All these Districts ceased to exist on the passage of the Act of 1868, except as they reorganized under that Act. The money stated to have been "expended" by this Commission was really expended by the Districts, except the amounts spent by the Commission itself for salaries and expenses, segregation and other surveys, and lawsuits. After the abolition of the Commission the Committees of the Senate and Assembly were directed to "investigate" the work of the Commission. (Concurrent Resolution, Jan. 16th, 1866.) Anyone with sufficient curiosity may unearth the report which was doubtless made.

VI. Act approved April 27th, 1863. (Page 684, Statutes 1863.) This Act permits owners of one-half of any large body of tide and marsh lands reclaimable by one general system to file the evidence thereof with the Clerk of the District Court and proceed to reclaim the same, assessing all holders within the tract in proportion to their acreage, such assessments to be lien upon the land. Upon making proof within three years of reclamation, the District to receive 80 per cent. of the money paid to the State, provided so much had been expended in reclamation. Lands to be deemed "reclaimed" when four-fifths of the land within the District "shall be secure from inundation by high tides to which they have heretofore been subjected."

VII. Act approved April 2nd, 1866. (Page 799, Statutes 1865-66.) This Act abolished the State Board of Swamp Land Commissioners, conveyed all the swamp lands belonging to the State, with all moneys in the State Reclamation Fund, to the Counties, respectively, in which the greater portion of any District heretofore formed or hereafter to be formed may lie or be situated to hold in trust for the purpose of constructing the necessary levees and drains to reclaim the same. Boards of Supervisors succeeded to the powers theretofore possessed by the State Board, and County Surveyors were made, Ex-Officers, Engineers of Reclamation, with power to employ "Assistants," which in most cases would probably have been quite essential. Boards of Supervisors, upon petition of owners of one-third the acreage of any District, were required to levy the tax estimated to be necessary to reclaim the lands. This Act makes a complete change in the policy of the State. All previous Acts, while making no pretense of treating the reclamation of the overflowed lands as a single problem, did retain entire control so far as there was any pretense of control, in State Officials. By this Act, however, the State sought to wash its hands of the whole business and turn over the property to the management of the County Boards of Supervisors. This general policy has remained unchanged to the present time.

## THE LAW OF 1868.

VIII. Act approved March 28th, 1868. (Page 507, Statutes of 1868.) This is the Act creating regular reclamation Districts, and in the main is still in force. It repealed all previous Acts for the disposal of swamp lands or in any respect conflicting with this Act. It is a general Act for the disposal of all Swamp lands.

This Act continued the price of the Swamp lands at $1.00 per acre, 20 per cent. cash, balance one year after call by Legislature, with no limit to the amount to be taken by one person. It permitted County Treasurers to retain proceeds of Swamp lands sold within the County for "County Swamp Land Fund" subject to disposal by Boards of Supervisors. Bonds or warrants of reclamation Districts were made receivable for lands within the District. Frontage on navigable water was restricted to one-quarter mile, and 90 days were allowed for owners of arable lands to file preferential claims on swamp or overflowed lands adjoining. Reclamation Districts could be organized on petition of one-half or more of the owners of any body of reclaimable land, said Districts to be created by Boards of Supervisors upon proof of regularity of proceedings. Each District was to elect three Trustees, and By-Laws were to be signed by owners of at least one-half the land within the District. Trustees were to certify cost of proposed improvements to Supervisors, who must appoint Commissioners to assess benefits and damages. Land owners who have paid up were to be credited with 80 cents per acre payable from the State or County reclamation fund. Owners who are unan-

imous in so desiring might proceed to reclaim without intervention of Trustees and might receive their 80 cents per acre from the reclamation fund. When a District has been formed, all new purchasers of land from the State are members of the District and subject to its By-Laws. Owners whose land is capable of "independent" reclamation may have their land set off at any time before complete reclamation, providing the District is not in debt. Swamp lands within one mile of San Quentin Prison or within five miles of Oakland or San Francisco are excepted from the operation of the Act.

This Act placed the entire management of reclamation work in the hands of the District Trustees and required the Boards of Supervisors to levy upon the District such assessments as the Trustees might certify to be necessary for reclamation work. While repealing all previous laws, it re-enacted their essential provisions so far as they were applicable to a condition of local control. In the main this remains the law today. Of course, there have been many amendments and previous to the adoption of the present Constitution there were a multitude of special laws applying to particular Districts. The present condition of the law may be seen by reference to Sections 3440 to 3493½, Political Code. While the State has expended a good deal of money in reclamation, and for some years, as will be seen, maintained a State Engineer, and now maintains a Commissioner of Public Works, both of whom have concerned themselves with reclamation works, no attempt has been made to exercise any effective control over the Districts, which are to-day as independent of each other, and of the State, as ever. The State money has been expended by State Officials, but it has been supplementary to the work of the Districts.

In this connection it is important to note that no "vested rights" as against the State have accrued to any Reclamation District. The Supreme Court has held that the State has not granted any swamp land to Counties, but has merely made Counties and County Officials agencies of the State for purposes of reclamation, and the State may alter or amend the laws relating to the subject at pleasure. (Kings County vs. County of Tulare, 119 Cal., page 509.)

So long as the law permitted only 320 acres to be purchased by one person, very little land was taken up in the river district, and that, presumably, on the higher lands. Some more was taken when a purchase of 640 acres was permitted, but it was not until all limits were removed by the Act of 1861, and what was thought to be a workable plan of reclamation was provided by the Act of 1868, that the lands really began to go. It was evidently impossible for owners of half a section in the river district to do any effective "reclaiming," and equally impossible for a large number of small owners to agree upon any plan or to provide the money. Since the State would not undertake the work, it must be done, if at all, by men of large means, co-operating with each other. While this law has been much abused, as opening the way to "land monopoly,' 'it was the only way by which there was any possibility of reclaiming the lands by private enterprise. The rapidity with which the land was taken up after 1868, in large tracts, however —in one case over four townships to one purchaser—evidently alarmed the public, for the limit was again fixed at 640 acres, including any swamp and overflowed lands previously owned, by Act of March 28th, 1874. (Amendment to Codes, 1874, page 140.) The purchases, however, probably were not found very profitable. Most of the land seems to have been bought on credit and after a few years there is found a constant string of Statutes extending time of payment and remitting interest. Under this law the lands were rapidly taken up, mostly in large holdings. As was probably foreseen by engineers, and was soon abundantly demonstrated, effective reclamation was not possible, except in the most favorable locations, even by large holders. It is true that much land has been reclaimed and is very productive, but comparatively little has been made actually safe, and of that much has been saved only by turning the water onto other land. Many purchasers ruined themselves in the desperate attempt to deal piecemeal with a problem which can be solved only by treating it as a whole.

The provision of the Act of 1868 which made it the duty of Boards of Supervisors to assess damages and benefits and levy taxes according to the net benefit received, raises an important question which can be most conveniently discussed here. The question is whether the Legislature had a right to enact such a law. That is a question which no citizen can raise, except academically, for the Supreme Court has held (County of Kings vs. County of Tulare, 119 Cal., page 509) that no power exists anywhere but in the United States to question the method of disposal of the Swamp lands. The Court has also often expressly sustained the plan of assessing according to benefits, and in at least one case has held that any other course would be unjust and not permissible. (Reclamation District

vs. West, 129 Cal., page 622. See also Reclamation District No. 108 vs. Hager, 66 Cal., page 59, and other cases.) Nevertheless, the point is well worth discussing, for in all the litigation which has occurred under this Act, there has been, as it seems to me, a certain lack of breadth and depth in considering the nature of the obligation resting upon the State and the purchasers of Swamp lands.

It must never be forgotten that these lands are held under a trust from whose obligations the Supreme Court has held, directly or by necessary inference, that neither the State or any subsequent purchaser can ever escape. The Swamp lands of the State, including those very easy and those difficult to reclaim, were given to pay for the reclamation of the lands. It could not have been the intention either of Congress or of the Legislature, when offering all the lands at a uniform price of $1.00 per acre, to permit those who were so fortunate as to get land which, by the outlay of a dollar an acre, could be made worth $50 or $100 per acre to escape all responsibility for the reclamation of the lands upon which $50 per acre must be spent to make them worth anything at all. It would not be equitable to tax land easily reclaimed any less than that which requires large expenditure. It might be claimed with some reason that all the Swamp lands in the State, by which must be meant all lands purchased as Swamp lands, whether really Swamp lands or not, should be assessed equally for the reclamation of all Swamp lands. It is certainly reasonable that all such lands intended to be reclaimed by one system of works—and in the end this must come to mean all lands in the river districts—should be assessed equally for the reclamation of all. Not being a lawyer, I profess to write only in the light of reason and common sense, which does not always seem to correspond with law. It would seem that the question must have been raised, but if so, it has escaped my search. I confess, however, that I have not read all the decisions of the Supreme Court, to the number of 87, if I have counted rightly, cited in the Annotated Codes. If this point has not been judicially decided, it is worth the attention of interested parties.*

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*Mr. A. L. Shinn of Sacramento who has kindly read the manuscript of this paper, does not concede the wisdom or justice of this suggestion, and I gladly give place to his objections thereto, which I presume will be those naturally occuring to the legally trained mind. I do not think he is right as to the equities of the case, but it is very important that all sides of such questions should be considered. I must point out, however, that Mr. Shinn does not discuss the exact suggestion which I make, whose scope is confined strictly to the lands bought of the State, as "swamp and overflowed lands" for $1.00 per acre, subject to the obligations imposed by the act of Congress of 1850. Everybody will agree with him and with the common rule and practice as to other lands that assessments should correspond with benefits. My objection to the treatment of the subject by the courts is that they have construed the obligations of the act of 1850 in such a way as to permit those who were lucky enough to get the higher lands to escape all responsibility for reclaiming the lands permanently submerged. The result nas been thus far to leave immense tracts unreclaimed, and possibly irreclaimable by any expenditure which those tracts alone will justify, while equal assessment of the whole would easily pay for the reclamation of the whole. I regard this as a proposition upon which the plain common sense of the average man is quite competent to pass, and do not think the judgment of a court in the least conclusive in this case except that we have to submit to it. Nor do I doubt that if the Legislature should elect to make assessments equal on the lands conveyed by the act of 1850, the courts would sustain the assessments, because they would be absolutely just, and the courts are swift to do justice when they see it. The State is under obligation to reclaim all these lands which are reclaimable. Engineers agree, and the experience of other countries confirms it, that all are reclaimable at a cost justified by the reclaimed value of all the lands. If buyers of the higher lands have no obligation beyond their own purchases, the obigation to reclaim all is not removed. It is, or may be, simply left on the shoulders of the State to be met by general taxation or repudiated as the case may be. I do not think this in accord with public policy, or with justice. The following, however, is the other side, as presented by Mr. Shinn:

The suggestion that is so urgently made in the article that all assessments should be equal is one that is not in harmony with legislation or experience. The Courts have frequently passed upon the subject of the apportionment of the burdens of public improvement of this character, and have uniformly condemned assessments that have not been levied with due regard to the relation of burden and benefit.

In the twenty-fifth American and English Encyclopedia of Law, pages 496 and 497, the rule is carefully stated and supported by the citation of many authorities. The text is as follows:

"One of the features distinguishing local assessments from general taxation, is

In this connection, and before taking up the history of legislation subsequent to 1868 it is desirable to note that reports of investigating committees and Commissioners show that the sale of the Swamp lands of the State has been accompanied with as much fraud as the sale of other public lands west of the 100th Meridian. A common form of fraud was the purchase, by the aid of perjured testimony and complaisant officials, of first rate land, occasionally wet, but easily drained, as "Swamp and overflowed lands," at $1.00 per acre. As to this, Marsden Manson, who was certainly in a position to know, says:

"Again, large areas classed as 'Swamp or overflowed lands,' are the best alluvial lands in the State. (Trans. Technical Society, Vol. V, page 85.) I do not know how much of this there was in the areas under consideration. Some land originally high and dry and acquired as such is now unquestionably 'Swamp land.'"

By Act of April 1st, 1876, a "State Land Commission" was created, which reported to the Legislature under date of June 26th, 1877, the report being published in Vol. IV, Appendices to Journals of Twenty-second Session. This report contains the following passage:

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that local assessments are imposed according to the benefit derived from the improvement, and not ad valorem. This principle of benefit equalling the assessment is the foundation of special assessments. If there be no special and peculiar benefit, the assessment is simply an arbitrary exaction which cannot be sustained. If the cost of the improvement exceeds the peculiar benefit to the neighboring property, the excess must be levied on the public at large; the special assessment is necessarily limited by the extent of the peculiar benefit." The same rule is announced in: Cooley on Constitutional Limitations, side page 509, et seq., and in Cooley on Taxation, page 416, et seq.; and also touched upon in Holly vs. Orange County, 106 Cal. 420; Creighton vs. Manson, 27 Cal., 613 Taylor vs. Palmer, 31 Cal. 254; Schumaker vs. Toberman, 56 Cal. 508; in the matter of Market street, 49 Cal. 546.

The principle of those authorities is peculiarly applicable to the conditions affecting the swamp and overflowed lands in the Sacramento Valley. A portion of the land is at all times covered with water to a considerable depth, and the land without reclamation has no present value.

Other lands in the immediate vicinity have such an elevation that they are for a considerable period of the year free from water and can be cultivated. Some of the lands are overflowed only at periods ranging from two to five years, and are susceptible to cultivation for perhaps three-fourths of the time without reclamation. A small expenditure might, and probably would, result in complete reclamation of the lands lying at the higher altitude, while the reclamation of the lower lands would require a more complete system and a larger expenditure.

The reclamation of the higher lands would add something, of course, to its value, but nearly as much as would be added to the value of the lower lands. Lands lying constantly under water might have a speculative value of $2 to $3 per acre, and by reclamation might be advanced to a valuation of $100 per acre, thus adding a benefit of $97 or $98 per acre.

The higher lands, which now have a value of $50 or $60 might also be advanced to a valuation of $100, thus adding $40 or$50 per acre to their value.

It is perfectly apparent that the lands that are benefitted to the extent of $50 per acre could not be assessed as much as the lands that are benefitted $90 per acre. This would be especially true in a case where the cost of reclamation would exceed the benefit that might be received by the higher lands. If land is benefitted $40 per acre, and the cost of reclamation is $50 per acre, it follows that compulsory reclamation would be confiscation of the property, to a degree at least, and to such a degree as is forbidden by the constitution.

This subject has been one of much consideration and discussion within reclamation districts that have been formed under existing statutes, and almost invariably assessments are apportioned according to the benefits received; there being but few instances in which the assessments are placed equally upon all of the lands.

The reason for the foregoing rule is not affected by the obligation of the State to reclaim its swamp lands. The only obligation imposed by act of Congress upon the State was to apply the proceeds of sales to the reclamation of the lands. (I cannot so understand the language of our Supreme Court quoted above. E. F. A.) Of course to that extent the lands stand on an equal footing; but beyond that equality ceases.

Another reason why an equality of assessment could not be practically applied is that a large quantity of the lands have been substantially, or partially, reclaimed. The unreclaimed lands have borne no part of the burden of such reclamation, and it would certainly be inequitable to compel the reclaimed lands to bear an equal portion of the expense of improving the unreclaimed lands after the reclaimed lands have borne the expense of their own reclamation. (Of course Mr. Shinn is correct here as I fully recognize in a later paragraph which Mr. Shinn overlooked. See page 20. E. F. A.)

Courts of Equity favor the diligent, and the rule should be as applicable in transactions of this kind as in any other instance.

The writer of the article has failed to apply that universal and well established principle of equity so well recognized in business tranactions, that, "He who receives the benefit must bear the burden." This principle is as applicable where burdens are to be apportioned as in any other case.

I think a reading of the authorities hereinbefore cited will satisfy the writer that he has not looked as deeply into the subject of assessment as the circumstances seem to demand. The subject is one of vast importance, and if the litigation

"The most remarkable fact in relation to this Swamp land grant is that of the 1,200,000 acres already sold and patented to purchasers by the State, not one-fifth of this quantity has been effectually reclaimed and fitted for cultivation. The title has passed from the State to the purchasers, who have not only got the lands, but the purchase money, which has been refunded to them, and herein a great imposition has been practiced on the State. There are thousands upon thousands of acres over which the tules are waving today that have long since been returned as 'reclaimed,' and upon which patents have been issued and the purchase money refunded."

Those who are interested to know in a general way and without particular reference to Swamp lands, the character of the administration of the various land trusts of the State, are referred to a report of a Legislative investigating committee, published in Vol. 6, Appendices to Journals of Twenty-third Session (1879).

## LEGISLATION SINCE 1868.

IX. Act of March 16th, 1872. (Page 383, Statutes 1871-72.) This Act provided that upon proof that reclamation had been completed, or that $2.00 per acre, gold coin, had been expended in trying to reclaim, patent, fully paid up, should issue, with refund of all money paid in for said land, less expenses incurred by the State and chargeable to it.

X. Act of March 28th, 1872. (Statutes 1871-72, page 668.) This Act provided that if amount assessed and collected for reclamation in any District prove insufficient, the Supervisors, upon petition of Trustees, shall order new assessment and levy to cover estimated additional cost.

XI. Act of 1878. Concurrent Resolution requesting Governor to cause to be proposed a statement of the indebtedness and assets of the several Reclamation Districts, with his recommendation for payment, for information of the Legislature at next session.

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so much deplored by the writer is to be avoided, any plans of apportioning the burdens of reclamation must be equitable and have some relation to the benefits received; otherwise, there will be an endless contest by those who may be called upon to pay more than a just share of the burden.

Upon this general subject Mr. M. A. Nurse, Chief Engineer in the office of the Commissioner of Public Works contributes the following memorandum:

The scope or force of the State's legal obligation, if any, to reclaim the swamp land granted it by Congressional act of 1850 have never been considered by our department in preparing and introducing plans of river improvement for navigation and drainage.

We have, however, been influenced by the belief that the State and nation are morally bound to introduce and maintain a system of river treatment that will tend to restore and preserve the facilities for navigation and drainage that existed prior to the channel ruin done by hydraulic mining operations under permission and encouragement from the Government and State.

Our whole effort has been directed to discharging what we conceived to be the State's duty in promoting commercial and drainage interests only. Wedded to the conviction that no plan of river improvement for navigation and drainage can be defended that does not embrace, as its essential features, provision for confinement within the channel the greatest volume it can safely be made to carry, we have urged channel enlargement below to facilitate flood escape there, and construction of moderate levees with wide waste weirs above, to enforce a regular flood presentation, for scouring purposes, through the channel instead of permitting it to escape at will to rush, in half the distance, through the Sutter and Yolo Basins to overtax the channel below. Channel ruin above and more frequent disaster below are certain to occur unless diversion from the river above be regulated in volume and duration adjusted to requirements for levee preservation.

We have held that the State's obligation or duty to both interests of navigation and drainage would be fully discharged by the establishment and maintenance of such conditions as will exact the utmost of the river channel in regularly passing a maximum flood volume and permitting none but the dangerous surplus to escape to the basins.

Such a system of control would reduce the cost and difficulties of reclamation to a minimum. District organization, under a wise law for distribution of the cost over the broad areas of California's overflowed lands would be encouraged to undertake its easier reclamation.

It should be borne in mind that reclamation benefits by any plan of protection against floods are variable.

It is beyond human wisdom to distribute with absolute fairness the benefits to accrue to the various lands comprising a reclamation district protected by either a levee or drainage system. Excessive rainfall or sipage from protracted flood may drown out areas that could be profitably tilled under different flood conditions. Hence any effort to assess the cost of proposed reclamation in the ratio of benefits to accrue from its completion is faulty and sure to result in litigation and delay in execution.

If the cost of reclamation cannot be evenly distributed upon the whole area of land sought to be reclaimed it would, in our opinion, be both wiser and safer to make the action of the commissioners of assessment final in the matter of costs for benefits and damages to each particular section or subdivision embraced in the district.

Nothing seems to have come of this, for it was repeated at next session (page 279, Statutes 1880.) It simply indicates that the Districts were getting into debt with no money forthcoming, at least in many cases, with which to pay.

XII. Act of March 29th, 1878. (Statutes 1877-78, page 634.)

This Act created the office of State Engineer, whose duty was to be "to investigate the problems of irrigation of the plains, the condition and capacity of the great drainage lines of the State, and the improvement of the navigation of the rivers." Provision was made for Assistant Engineers and an office force, and $100,000 appropriated from the State Treasury to defray the expenses.

Under this Act William Hammond Hall was appointed State Engineer, and under his direction, while the office was continued, there was an enormous mass of engineering data collected bearing on reclamation work as well as other matters. The State Engineer had no administrative authority whatever, but the Act empowered him to study all the great engineering problems of California. His reports so far as published afford the first comprehensive view of the reclamation problems. In these reports will be found much, if not most, of what has been recently said by our irrigation and reclamation engineers and experts. Mr. Hall, however, was of the opinion that the bed of the river could ultimately be made to carry the waters of all ordinary floods, which seems to be contrary to prevailing engineering opinion at the present time. Mr. Hall was a very positive man, and his investigations and the publication of his reports proved very costly. There finally grew up a strong opposition to him personally, and in his report under date of December 31st, 1888, (Appendices to Journals of Twenty-eighth Session, Vol. 1) he declined to serve any longer, but urged the continuance of the office. By Act of March 19th, 1889, (Statutes of 1889, page 328) the office was "extended" for two years, with the proviso that the State Mineralogist should be State Engineer. That was the last of the office.

XIII. Act of April 1st, 1878. (Statutes 1887-88, page 987.) This Act undertook to solve the problem so far as it involved the Swamp lands in the Counties of Yolo, Solano and Sacramento, by constituting what was called "The Sacramento River Drainage District." The Act described the works and drains by which the reclamation work was to be effected, and provided for the appointment by the Governor of three Commissioners to hold office for four years and until their successors were elected and qualified. Vacancies to be filled by the Governor. The Commissioners were to appoint engineers to survey and report on the proposed works. If they found that the works would be effective and could be constructed for a sum not exceeding $5.00 per acre of the lands of the District, an election was to be called to see whether the people would vote the funds. If they would, the works should be constructed. If the Engineer's report was unfavorable, nothing was to be done. Ten thousand dollars were appropriated from the State Treasury for preliminary expenses. As the office of State Engineer was created at the same Session, the result was, probably under some provision of law which I have overlooked, that State Engineer Hall had the general oversight of surveys made under this and the Act "To Promote Drainage" passed two years later, and the projects were approved by him. At any rate, a Commission was appointed and the money appropriated expended in surveys, of which a report was made in January, 1880. I have not seen the report, and as no further appropriation was made, the Commission lapsed.*

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*As to this Mr. A. B. Nye, who has looked up the report referred to, writes us as follows:

I think there is somewhat of a misconception in the paper of the purposes of the Act of April 1st, 1878, creating the "Sacramento River Drainage District." Although couched in general terms, this act had a special purpose. That is found expressed, or perhaps it would be better to say disguised, near the end of section 2, where one certain way of effecting the drainage of the tule basins is prescribed, viz.: the cutting of a canal leading from the Yolo-Solano basin to Nurse's slough—in other words, through the Montezuma hills. The whole scheme was, first to find out whether this much talked-of project was feasible, and, secondly, if it should be so reported, to provide ways and means for carrying it into execution.

This is made plainer by the report—which I note that you say you did not find. It was presented under date of December 15th, 1879, by Messrs. R. S. Carey, W. F. Knox, and R. S. Egbert, the commissioners, and was accompanied by reports by two engineers, Isaac W. Smith and J. C. Pierson. These engineers reported adversely on the Montezuma hill proposition, and the commissioners accepted the verdict as correct. It was also reported tthat serious engineering difficulties were presented by other features of the proposed work, such as the establishment of a connection between the Sacramento River and the drainage canal and the disposition of the waters of Putah and Cache Creeks. In consequence the commissioners recommended that nothing be attempted through the district organization pro-

XIV. Act of April 23rd, 1880. (Statutes 1880, page 123.) This Act virtually or expressly superseded the Act of 1878. At this time the contention between the Valley farmers and the hydraulic miners had become acute. Complaints were made that the river bed was becoming filled with mining detritus, thereby greatly increasing the danger from floods which were covering much land with debris, compelling the construction of higher levees and carrying the flood waters to fertile lands which had never before been flooded. The intent of both these Acts was to give relief by restraining the debris from entering the lower rivers, increasing their scouring capacity so that they would clear out the channels, rectifying the alignment, and in all possible ways helping the flood waters to get quickly to the sea. The Act of 1878 provided only for investigation, but the Act "To Promote Drainage" contemplated actual construction. It provided that the Governor, State Engineer and Surveyor-General, should, ex-officio, constitute a Drainage Commission to divide the State into drainage districts on natural lines as they might be indicated by the surveys of the State Engineer. Whenever a District should be organized, the Governor was to appoint the Directors thereof. The Act contained the necessary administrative provisions which need not be summarized, except the one point that all work in the Districts was to be done under the general direction and subject to the supervision of the State Engineer.

Under this Act, and upon report of State Engineer Hall, the Drainage Commission constituted "Drainage District No. 1" (there was never a No. 2), comprising, as stated by the Directors, "practically all that portion of the State of California drained by the Sacramento River and its tributaries." There is an interesting discussion of the whole subject, both from the economic and physical standpoint, in the report of the State Engineer for 1881 (Appendices to Journals, Twenty-fourth Session, Vol. 4). It is strongly urged that no satisfactory management of the river can be expected until the problem is attacked as a whole, and that the cost of the whole is justly chargeable upon the land benefitted as a whole, although Mr. Hall does not state that all land benefitted should be equally taxed.

The revenue for carrying out the provisions of the Act "To Promote Drainage" was to be derived from four sources: A general State tax of one twentieth of one per cent. to constitute the "State Drainage Construction Fund"; a District tax of the same amount to constitute the "District Construction Fund"; an assessment on lands reclaimed not to exceed $3.00 per acre; an assessment of one-half cent per miner's inch per twenty-four hours on all water used in hydraulic mining. All the money thus produced was to be "used exclusively for the construction of dams for impounding debris from the mines" and "for the improvement and rectification of river channels in which said debris flows." This Act continued in force some two or three years, and the Directors of District No. 1 expended the sum of $561,021.67. (Report of Assembly Committee on Claims, Appendices to Journals, Twenty-fifth Session, 1883.) The brush dams constructed did not retain the debris as expected, and thus much money was wasted. Some permanent improvement was doubtless made. On September 26th, 1881, the Supreme Court declared the Act unconstitutional. (People vs. Parks, 58 Cal., page 624.) At the time of the decision the District had obligations outstanding to the amount of $197,104.18 in excess of the money in the construction funds. This was according to the report of the Assembly Committee already quoted. The money was due largely to contractors, some of whom were in danger of ruin. The State finally paid to close out the undertaking, by the Act of March 10th, 1885, (Statutes 1885, page 78), $254,157.01, of which $190,000 was from the General Treasury, and by the Acts of March 4th, 1889, (Statutes 1889, page 55) and March 19th, 1885, (Statutes of 1885, page 219) an aggregate of $69,294.45 more.

(On March 18th, 1885, an Act was passed for the organization of "Drainage Districts" which, although by its terms applicable to all Swamp lands, was not intended to apply to lands legally known as "Swamp and overflowed lands," granted to the State in 1850. A new law of the same kind was recently enacted. This one intended to apply to the isolated districts and expressly to those suffering from over-irrigation, and do not concern this inquiry. There are several subsequent Acts of this kind which are omitted.)

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vided by the act of 1878, and that new legislation be had by which "all the lowlands of the Sacramento Valley that need, or may need, reclamation or relief works be embraced in one district, under one control." It was also the opinion of the commission that "the mining debris in the Sacramento River and its tributaries forms an important factor in the consideration of all questions pertaining to a solution of this problem."

I infer that the passage of the Act of 1880 was a direct consequence of this report made by the commission of 1878.

All this time, of course, the old Reclamation Districts were continuing to act independently. No further attempt at State aid or control was attempted until the law of 1893.

XV. Act of March 24th, 1893. (Statutes 1893, page 345.) This Act creates the office of Commissioner of Public Works "for a period of four years only," the Commissioner to be appointed by the Governor; term of office, two years from March 1st, 1893; salary, $4,000 per annum; secretary at $150 a month. Duties of the Commissioner to examine lands subject to inundation, propose plans and estimates as directed by the Governor," and such extra duties in the examination, supervision and management of such public works constructed or carried on by the State, or under State authority, or under any law of the State, as he may be directed to perform, from time to time, by law." Power conferred "to employ engineers, assistants, attorneys, agents and persons as he may deem necessary to carry out the provisions of this Act, or to perform any duties imposed by law upon said Commissioner, and to fix their compensation." Thirty thousand dollars appropriated for carrying out the provisions of the Act.

This office has been continued to the present time. All the Commissioners appointed seem to have been faithful and zealous officials.

A. H. Rose, the first Commissioner appointed under this Act, continued the work of investigation and collection of data, making a full report December 15th, 1894. Commissioner Ed. E. Leake continued the same work on an appropriation of $10,000, reporting on November 16th, 1896, with recommendations of Chief Engineer J. R. Price and Assistant Engineer M. A. Nurse, which were made the basis of subsequent construction work. On December 9th, 1899, Commissioner Frank D. Ryan assumed the office, which he still holds.

XVI. Act of March 17th, 1897. (Page 171, Statutes of 1897.) This Act—still in force—re-enacted the law creating the office of Commissioner and provides for the appointment by the Governor of an Auditing Board to the Commissioner of Public Works, consisting of five persons who shall receive no compensation. The projects laid down in the Report of the Commissioner of Public Works, dated November 16th, 1896, is made the basis of operations under this Act, aud the plans therein submitted are directed to be carried out and completed, for which purpose the sum of $300,000 was appropriated from the State Treasury. The Commissioner may employ such persons as the Auditing Board deems necessary at a compensation fixed by the Board, which has also power to let contracts after due advertisement. The Board has ample powers to condemn property by due process of law.

XVII. Act of March 2, 1901 (Page 91, Statutes of 1901.) This Act amends the Act of March 17, 1897, by extending the authority of the Commissioner and Board of Auditors to enable them to do reclamation work virtually throughout the State of California. They can do whatever they can get appropriations to pay for in addition to the work outlined in the Commissioner's report of 1896.

An Act of March 16th, 1901, (Statutes 1901, page 329) amends Section 3488 of the Political Code so as to permit work under other Sections of the Code to be done on any lands within any city of 100,000 inhabitants, and on tide lands within two miles of all other incorporated cities subject to overflow from tide and inland waters. I have not looked up the purpose of this Act.)

Note: While the scope of this paper is confined to the areas of Swamp lands connected with our great river systems, it is never to be forgotten that whatever obligations rest upon the State in connection with those lands, precisely the same obligations exist with reference to the similar lands adjacent to Suisun, San Pablo, San Francisco, Humboldt, and other bays, and generally in relation to all the Swamp lands of the State. The State has a duty to compel their reclamation and the power to do so. The engineering problems are simple and it is a question whether the State has not now a duty to perform. As to the power of the Legislature to compel the reclamation of all lands the Supreme Court bas held that the Legislature has the constitutional power to provide for the reclamation of all the Swamp and overflowed lands in the State, including those whose title is from a Mexican grant, and to assess the land reclaimed to pay for the expense incurred. (Hager vs. Supervisors of Yolo County, 47 Cal., 222.)

## THE SUCCESSIVE POLICIES PURSUED.

From this summary of our Legislature and Administration in respect to Swamp and overflowed lands we ascertain that the State has had the following policies at different periods:

1st. A short period of entire neglect of the obligation to reclaim.

2nd. The years from 1855 to 1861, in which the State granted lands to indi-

viduals for reclamation virtually by such methods as they might devise, either individually or in association with others.

3rd. The period from 1861 to 1866, in which the State undertook to supervise and control the work of Reclamation Districts.

4th. The period from 1866 to 1868, in which the State, having transferred the Swamp and overflowed lands to the counties in which they were situated and washed its hands of the whole business, permitted the organization and operation of Districts under the imperfect laws then in force.

5th. The period from 1868 to the present time, when under workable laws gradually modified and perfected the Districts have continued to operate under the general oversight of the Board of Supervisors, but with no direct responsibility to any central authority. Under this law each District has looked out for itself, regardless of others, of the interests of navigation—except as compelled to do so by the Federal authorities—or of the general welfare.

Under the operation of these laws the State has disposed of all its swamp and overflowed lands in the area under consideration, and large tracts have been so nearly reclaimed as to be reasonably safe from all ordinary floods. The city of Sacramento has especially so intrenched itself that flood water must go elsewhere than within its bounds.. Nevertheless, the problem is still unsolved, for it has not been treated as a whole, nor the work done in the way in which all engineers agree that it must be done if the whole reclaimable area is to be made safe and habitable with the spirit of the Federal grant. The burden is still on the State in the exercise of its sovereign powers, to comply in good faith with the terms of the grant under which it received the lands. That no power exists, except in the United States—which is unlikely to exercise it—to question the dealings of the State with these lands, should be of no consequence. Both the faith of the State and the interests of the whole people demand the complete solution of the problem.

## THE SUMS EXPENDED FOR RECLAMATION.

There had been expended in 1894, so far as the expenditures of the Districts could then be traced:

| | | |
|---|---|---|
| By Sacramento and American River Districts | | $9,870,654.00 |
| By San Joaquin Districts | | 3,912,810.00 |
| By the United States (River Improvement) | | 1,115,696.45 |
| By the State up to 1894 | | 3,191,588.20 |
| By the State since 1894— | | |
| 1894-5 | $15,729.63 | |
| 1895-6 | 14,053.23 | |
| 1896-7 | 7,546.14 | |
| 1897-8 | 15,532.69 | |
| 1898-9 | 119,120.45 | |
| 1899-1900 | 22,852.14 | |
| 1900-1 | 74,118.36 | |
| 1901-2 | 61,837.24 | |
| 1902-3 | 22,539.55 | |
| 1903-4 | 27,315.66 | 380,645.09 |
| Total | | $18,471,393.74 |

Not all the money expended by the Federal Government has directly aided reclamation, and none has been expended with that object, but so far as its expenditures have increased the carrying capacity of the rivers they have helped reclamation. I have not sought to obtain from the counties the sums spent by Districts since the date of the report (Report of A. H. Rose, Commissioner of Public Works, 1894, page 10), from which the above figures are taken. In a rough way we may say that more than $20,000,000 has been expended, an amount which, if it had been systematically and intelligently applied, would have been ample for complete reclamation.

From the sums expended by the State is to be deducted, if I correctly understand the report of 1894, the amount paid to the State for land which, will of

course be as many dollars as there are acres, say $750,000, leaving the sum of $2,822,233.29 appropriated directly from the treasury. In its disbursements of the funds appropriated from the general treasury, aside from occasional engineering expenditures, the policies of the State have been as follows:

1. The State supervision of Districts under the Act of 1861.

2. Engineering investigations, plans and estimates by the State engineers from 1878 to 1889.

3. Direct construction work paid for from the State treasury independently of the districts and in addition to their work, from 1893 to the present time.

It is foreign to the purpose of this paper to consider any engineering question. Its sole object is to state what we have done, in connection with the obligations resting upon the State and the land owners, in order that in the light of all equities involved the club and the public may judge and determine who ought to pay for the work still to be accomplished. The engineers will reclaim the land if they are supplied with funds. The main question is, "Where is the money to come from?"

As to this, I propose, in accordance with the custom of the club, to state the tentative conclusions which I have personally reached, for reference to the section in order that it may have something definite to agree with or dissent from. I am still in an entirely judicial mind, and am as ready as the Scotchman to fall in with the views of those who have the better reason.

## FEDERAL AID TO RECLAMATION.

Before stating these propositions, however, it may be well to devote a paragraph to the policy of the United States Government in regard to such improvements, and the probability of inducing that Government to assume, as some of those interested have proposed, the main burden of reclaiming these lands.

It is the settled policy of the United States to maintain entire control of all navigable streams and make, at its own cost, all improvements in aid of navigation, so far as the Congressman from the district can induce Congress to act, which is only possible in the years when no general election is pending. Its control of the rivers is exclusive and no State or district work affecting the regimen of a navigable stream can be done except by express or tacit permission of the War Department. But while expending money freely for river improvement, Congress has never, so far as I know, except in one instance, appropriated money for reclaiming swamp lands. That exception is the case of swamp lands on the lower Mississippi. In this case, Congress has appropriated large sums for the construction of levees for the protection of land, swamp and other, from inundation by flood waters. Upon the precedent thus established, some of our people are building hopes of large assistance in reclaiming our own lands. Now, while I confess that I have most admiration for a sturdy people which never looks to any outside source for any kind of help, yet I also confess myself such a degenerate that if I could see any way of inducing the United States to pay the whole bill, I should favor dropping all effort in any other direction. Unfortunately, I don't. There are, however, large expenditures which the United States ought to make upon the river, in the interest of navigation, and I believe will make them. And they are of a character which will greatly assist in the work of reclamation. It would, however, be utter folly to wait for the Federal Government to act, or even lead in the work. The only rational course for us is, while not ceasing to urge the claims of our river upon the attention of Congress, to act as though we did not expect the appropriation of one dollar.

## FEDERAL RECLAMATION IN MISSISSIPPI VALLEY.

The facts as to Federal assistance to reclamation of the swamp land of the Mississippi Valley are as follows, as gathered from Senate Document No. 245, Fifty-eighth Congress, Second Session (April, 1904), which can doubtless be obtained upon application to any Senator, and which contains a great deal of matter of value to those interested in the control of the flood waters of the Sacramento:

| | |
|---|---|
| Total alluvial area subject to overflow | 19,065,600 acres |
| Percentage of area in cultivation | 19.7 |
| Total number of levee districts | 25 |
| Total length of levee on Mississippi and tributaries | 1,956 miles |
| Length of extension required | 191 miles |
| Total assessed valuation of levee district | $112,887,591 |

(Except Orleans District.)

| | |
|---|---|
| Assessment of Orleans District | $150,055,240 |
| Total contribution for levee districts in 1902 | 2,239,754 |
| Total contributed by United States in 1902 | 1,000,000 |
| Total contributed by States and districts since 1882 | 28,000,000 |
| Total contributed by United States since 1882, about | 17,000,000 |

The first appropriation for levee building by the Federal Government was in 1882, since which time it has been a regular contributor. The sums which have been named as appropriated by Congress for levee building are in addition to the appropriations for river improvement in aid of navigation. According to Representative Burton, Chairman of the House Committee in charge of this subject, the States, since the beginning of the joint work in 1882, have contributed about 62 per cent of the total expended and the United States about 38 per cent.

The State and district funds are raised largely by the sale of bonds.

In the State of Louisiana there is a State tax of 1 mill on the dollar for levee construction. In addition to this, there is a uniform tax of 10 mills on the dollar (apparently by State statute) on all property subject to overflow. (No assessment according to "benefits.") In addition to these taxes, there is a levee tax of $1.00 on each bale of cotton produced and corresponding taxes on sugar, rice and other principal products, but whether in the State or the district, is not clear from the statement. Besides this, the levee districts of the State have issued bonds to the amount of $6,655,200, upon which they pay interest, and presumably sinking fund.

The total revenue from taxation is about $1,960,000 per annum and the tax rate in the districts for levee purposes ranges from 1½ to, in a few cases, 3½ per cent on the assessed valuation. For every dollar contributed by the Federal Government the States and districts contribute $2.25. The swamp lands in these States were granted to the States, so far as the lands were then the property of the United States, by the same act which conveyed the swamp lands in California.

The foregoing are the essential facts in regard to national aid to reclamation in the South. Whether Congress will make its action in regard to these lands a precedent under which to grant similar aid to us cannot be known until it is tried. If California were the only State with swamp lands to be reclaimed our chances would be good. As, however, there would be many States asking for the same favor, it is possible that Congress will take the position that aid to levee building on the Mississippi cannot properly be made a precedent in our favor, for the reason that the Mississippi and its tributaries drain forty-one States, while our rivers lie wholly in California; because the Mississippi Valley reclamation is an undertaking too large for the resources of any State, while our proposed improvement is not; and that the groups of States directly interested in the Mississippi could not be got to effectively and continuously act together except under the leadership of the Federal Government. Finally, it is likely to be claimed that the products to be expected from the reclamation of an area of 29,790 square miles, and the population to be supported therefrom, constitute an interest of continental magnitude, possible to be dealt with only by the national resources, and therefore not to be taken as a precedent for a comparatively small undertaking within the boundaries of a single State.

The above, I imagine, are some of the things which would be said in Congress in opposition to aid proposed to be given for reclamation purposes in this State, quite possibly followed by rather rigid inquiry as to the wisdom and vigor with which this State has acted in the matter. But after all, the real important bottom fact which we have to consider is that the States directly and indirectly concerned in the Mississippi reclamation have the votes in Congress to carry their measure, while we should have most of them to get.

## GENERAL CHARACTER OF THE PHYSICAL PROBLEM.

In considering what ought to be done in respect to reclamation of the Sacramento swamp lands, it seems to be the opinion of all engineers that the first thing to be done is to increase the carrying capacity of the river to the highest possible point and then provide for the control and direction of such overplus of flood as cannot be kept in the river, meanwhile, of course, interfering as little as possible with the natural side outlets as they now exist. Assuming this to be the judgment of the engineers, it naturally follows that the first work, beginning at the mouth of the river, is to straighten, confine and scour out the channel at least to the extent of the debris deposited since 1849, and probably removing the shoals. But if this plan is adopted, thought must be given as to where this debris is to again find rest and receive the continuous additions which each flood will bring down. Some part of the sediment may doubtless, and with profit, be carried by hydraulic

dredgers to build up and reclaim adjacent banks, but it seems to be the general opinion that the greater part of it would naturally go to shoal up Suisun Bay. As a matter of fact, I suppose that no disposal of these deposits will be satisfactory which does not place them on the adjacent banks or entirely outside the Golden Gate, or at least where there is no danger of injury to navigation. And this fact must be kept in mind when estimating the cost of the improvements and the sources of revenue from their construction.

## SOME EQUITIES WHICH SEEM TO EXIST.

These deposits have come partly from hydraulic mining and partly from the work of cultivated lands and the erosion of denuded forests. The courts have held the hydraulic miners responsible for their contribution and that they must keep their debris out of the river bed. Nevertheless, that part of the debris which came from hydraulic mining was the result of work carried on not only with the permission, but with the enthusiastic encouragement both of the State and Nation. The gold mined in California did, in fact, have a great part in the accumulation of the stock of gold which enabled the United States to so easily resume specie payments at the close of the great greenback period, and it helped during the whole period of the Civil War, and subsequently, to protect California from the curse of a depreciated currency. It seems to me that there was thereby created both upon the State and Nation some measure of responsibility to aid in the removal of the debris. The courts will not interfere with cultivation or timber cutting, upon the theory, I presume, that the welfare of the whole State requires the utilization of its natural resources, except in so far as it obviously inflicts great damage which can be traced and identified, and causes the destruction of other resources. Since these operations which have tended to fill the rivers and cause the overflow of lands have proceeded with the assent, and have been for the benefit of the State and Nation, and as it is greatly to the advantage of the State that the overflowed lands shall be reclaimed and populated, it appears to me that there is some obligation resting on the State to aid in reclamation. There is, at any rate, and obviously, no argument which can be offered for an appropriation for this purpose from the United States Treasury which is not a still stronger argument for appropriations from the State Treasury. As a matter of fact, the State has for many years recognized this obligation, and is now expending money for reclamation purposes under the direction of the Commissioner of Public Works.

In the matter of special assessments on the overflowed lands for their reclamation there are three classes of lands in the valley—first, the overflowed lands ceded to the State by the act of 1850, which form the bulk of the property; second, the swamp lands which formed part of the Mexican grants and of which, as we have seen, the Supreme Court has held that the State has power to compel the reclamation; third, the lands which were originally uplands, but which have become swamp lands by reason of the rise in the flood level by reason of deposits of sediment in the river, or as the result of interfering with the original and natural flood channels by works constructed under authority of law. As to the first class of lands, the Supreme Court has held that they are liable to any assessment for their reclamation which the Legislature may find necessary. To me it seems perfectly clear that the assessments ought to be equal on the acreage, regardless of relative "benefits."* As to the second class, the Mexican grant swamp lands, the equities are certainly the same, and if I correctly understand the Supreme Court decision, the power of the Legislature to assess is the same, although very possibly according to benefits only. As to the third class, the uplands made swamps through no fault of their owners, it does not seem to me that their mis-

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If we assume that the owners of these swamp lands are under obligation to reclaim them whether they wish to do so or not, and that they have found the cost greater than they can well bear, it is interesting to know that they quite recently had an opportunity to get out of their bargain with the State with some profit if they desired the opportunity and could all agree to take it. During the year 1902, an unsuccessful effort was made by a syndicate to purchase all these lands, and while the names of the proposed purchasers were never made public, I am informed in such a way that I believe it that the offer was made in good faith by men who could command the money to make good their offers and who were prepared, if they could acquire all, or nearly all the lands, to thoroughly reclaim them on a comprehensive plan, entirely at their own cost. I am also informed by a credible gentleman who absolutely knows the facts that the offers made—conditional upon their acceptance by a sufficient number of owners—were of the following character:

fortune ought to subject them to special taxation. It seems to me that such lands will contribute their share if they pay the tax common to the whole State.

There might be segregated from the mass a fourth class—the islands—which by their great richness, their requirement of protection on all sides, their facilities for irrigation during the summer, and their advantage in cheap water transportation to markets, certainly do constitute a distinct class. Logically, as I have said, I do not think their assessment should exceed those upon other swamp lands, for I believe that the entire swamp land grant should be devoted to redeem the entire area. That is what would have occurred had the State not shirked its obligations, and had reclaimed before selling. As it stands now, individuals and not the State would reap the advantages—as well as the disadvantages—of equal assessments, and it may be necessary, where disparity of values is great, to recognize existing facts and in the case of islands—and possibly some other special locations—to modify the severity of the logic of the case, if it can be done without starting litigation—a contingency which must be kept constantly in mind in California—which would indefinitely delay reclamation. As a practical question, however, I am convinced that no owner of island land would object to any proposition of this kind which seems founded in reason and which made part of a plan for comprehensive and final work. Anything would be better than their present condition.

There is yet one more important matter to be considered. Assessments, it seems to me, should be equal, in the main, upon lands conveyed by the act of 1850, but nobody should be compelled to pay twice for the same thing.

Of the vast amount of money that has been expended by reclamation districts and individuals, much has been wasted and ought to be the loss of those who wasted it. But much, also, must have been put into permanent contributions which would form part of the permanent system. So far as any district, or any individual or city has something which can be delivered to the State as a part of the permanent reclamation works, such district or individual ought to have credit for it in any future scheme of assessment and taxation. It would evidently be a matter of great difficulty to adjust. Human wisdom is perhaps unequal to making an adjustment on absolutely equitable terms. I do not believe it impossible to find adjusters of sufficient judgment, integrity, character and tact to enable them to adjust all the inequalities of which I have spoken—and those which have not occurred to me—so as to satisfy the communities concerned. The great desire for a final settlement of the reclamation question will have a powerful influence on men's minds.

## THE TENTATIVE CONCLUSIONS OF THE WRITER.

Conclusions based on such principles as I have laid down, and which seem to me sound and equitable, must necessarily widely differ from the lines upon which we have been working. If, however, the principles are equitable, and if, as all lawyers contend, there is always a lawful way to accomplish an equitable purpose, the plan outlined is not impossible of execution. I offer, therefore, the following tentative personal opinions for reference to the Section of Commercial Interests for its consideration and report to the Club:

1. The State should resume entire control of reclamation of the Sacramento and San Joaquin swamp and overflowed lands, in formal and permanent cooperation, under such organization as may seem best, with the Federal Government, which has charge of the interests of navigation.

2. The service should be absolutely, and by the most drastic legislation, removed from any form of political influence.

3. The Chief Engineer should be a man of the highest standing in his profession, preferably with experience on the Mississippi River, and the salary should

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"The offers made, in all cases: (1) Were greater than the value of the land capitalized on a basis of seven per cent income; (2) Were greater than purchase price plus cost of reclamation work; (3) Were greater than assessed value; and in fact, no reasonable selling price would have been refused—the main point being to get options on the majority of swamp land (in acreage and value) at any price not too unreasonable."

People who could refuse such offers as that to get them out of an alleged bad scrape must have a high opinion of the value of their holdings, and should be willing to do whatever is required to reclaim their lands in accordance with their obligation. As a matter of fact I do not doubt that the great majority, especially of those living on or near their lands, are quite ready and willing. If there is an obstinate minority who object to the necessary assessments, and yet would not sell to those who stood ready to reclaim, the only course seems to be the enforced fulfillment of their obligation.

be such as to attract a man of that kind. I do not think any California engineer available for the reason that all our hydraulic engineers are too much committed—or would be believed to be too much committed, which would be about as bad—to some particular plan. Besides, I do not believe any Californian could be appointed—or at least would be appointed—with no regard to political affiliations.

4. The existing reclamation districts should be continued in existence with power to assess only for maintenance and emergencies, until one after another they cease to be necessary, when they could dissolve under existing laws.

5. The State should erect all the swamp lands on the Sacramento and lower San Joaquin into one assessment district, with equal assessment on all lands.

6. The State should consider the policy of erecting the island lands—and any other similar lands if there are any—into an extra assessment district, to be assessed at an additional rate.

7. The State should levy a tax of 1 cent on the hundred dollars for ten years,* conditional, if possible, on the pledge of an equivalent sum for the same period from the National Treasury, with the understanding that the first object in the expenditure of this fund should be the rectification and deepening of the channel of the rivers and such disposal of the material removed as should involve no danger to the interests of navigation in navigable waters elsewhere.

8. That the cost of a complete reclamation system be estimated, including that of such auxiliary drains as the Montezuma Canal, should they be ultimately found necessary, and that the cost, or so much thereof as should be ultimately required, les sthe sum contributed by the State and Federal Governments, should be assessed upon the lands of the district, with due credit to each of the present districts for the estimated value of the construction turned over by them, which should thereupon become the property of the State.

9. That after the completion of the system the cost of maintenance be assessed equally on all the lands of the district and paid into the State maintenance fund.

10. That for the purpose of making the burden on the reclaimed lands as easy as possible, bonds of the State of California be issued as required for such part of the work as cannot, in reason, be borne by annual taxation; such bonds to be issued without conditions in order to secure a low rate of interest, but under a law which shall require principal and interest to be paid from the proceeds of the assessment on the reclaimed lands, and no bonds to be issued until the validity of the assessment on the reclaimed lands for their redemption shall have been fully sustained by the Supreme Court. The bonds to run for such period as may be deemed best, provided that complete redemption be effected within forty years.

11. That the State ought not to appropriate another dollar in aid of reclamation—unless, possibly, in some great emergency—until a complete plan for reclamation has been thought out and funds provided for its accomplishment, under such pledges of the State and Nation as shall assure an ample and uninterrupted revenue.

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*The assessment on which the State tax was levied in 1902 was $1,288,076,062, and a tax of one cent on the hundred dollars would therefore produce about $128,807 per annum, increasing from year to year as the assessed property increases. The Regents of the University estimate over $150,000 as the income of a one cent tax for the coming year. A tax of one cent on the hundred dollars means a payment of but 10 cents on each $1,000 of assessment, or $1.00 on $10,000 assessment.

# Discussion at the June Meeting.

## Report of Section of Commercial Interests on the Foregoing Paper.

June 8, 1904.—At this meeting the Section of Commercial Interests made the following report on Mr. Adams' paper:

It has been difficult, with the time at the disposal of this Section, to enter into any real study of the very important questions raised by this valuable paper. The subject is a large one, coupled with the disadvantage that it is not new, and has suffered much by attempts at solution on the installment plan. Much legislation of a difficult and experimental character will be needed to clear away the accumulated wreckage of past attempts before it is possible to begin the great work of controlling the flood waters of the two great river systems of California. We are not prepared to recommend to the Club all the conclusions arrived at by Mr. Adams, nor are we prepared to give any satisfactory substitute for any of them, and therefore think it best to place them before the Club for discussion with some slight modifications that we thought would prevent such a discussion of details as might obscure the main question, which is simply: How can the State of California best arrange for carrying out such a great work of public utility as is outlined in this paper? We therefore present the following conclusions, on which we recommend separate discussion and action by the Club.

1 The State should resume entire control of all reclamation works on the Sacramento and San Joaquin Rivers and overflowed lands in formal and permanent co-operation with the Federal Government, by such organization as may best serve the interests of reclamation and navigation.

2. The organization should be absolutely and by the most drastic legislation removed from any and all forms of political influence.

3. The engineering work necessary to carry out the extensive reclamation works contemplated should be placed in control of a Board of Engineers of the highest standing in their profession, who, in conjunction with the Government Engineers in charge of the navigable river part of the work, should have full control until the whole undertaking is complete. The compensation should be such as would attract men of known ability and experience in works of this character.

4. The existing reclamation districts should be continued in existence (with power to assess only for maintenance of present work and such emergencies as might arise), until one after another they cease to be necessary when they could dissolve under existing laws.

5. The State should erect all the swamp lands on the Sacramento and lower San Joaquin into one assessment district, with equal assessment on all lands. The State should also consider the policy of erecting the island lands—and any other similar lands, if there be any, that reap unusual advantages from the reclamation works—into an extra assessment district, to be assessed at an additional rate.

6. The State should levy a tax of 1 cent on the hundred dollars for ten years, conditional, if possible, on the pledge of an equivalent sum for the same period from the National Treasury, with the understanding that the first object in the expenditure of this fund should be the rectification and deepening of the channel of the rivers and such disposal of the material removed as should involve no danger to the interests of navigation in navigable waters elsewhere.

7. That the cost of a complete reclamation system be estimated, including that of such auxiliary drains as the Montezuma Canal, should they ultimately be found necessary, less the sum contributed by the State and Federal Governments, should be assessed upon the lands of the district, with due credit to each of the present districts for the estimated value of the construction turned over by them, which should thereupon become the property of the State.

8. That after the completion of the system the cost of maintenance be assessed equally on all the lands of the district and paid into the State maintenance fund.

9. That for the purpose of making the burden on the reclaimed lands as easy as possible, bonds of the State of California be issued as required for such part of the work as cannot, in reason, be borne by annual taxation; such bonds to be issued without conditions in order to secure a low rate of interest, but under a law which shall require principal and interest to be paid from the proceeds of the assessment on the reclaimed lands, and no bonds to be issued until the validity of the assessment on the reclaimed lands for their redemption shall have been fully sustained by the Supreme Court. The bonds to run for such period as may be deemed best, provided that complete redemption be effected within forty years.

10. That the State ought not to appropriate another dollar in aid of reclamation—unless, possibly, in some great emergency—until a complete plan for reclamation has been thought out and funds provided for its accomplishment under such pledges of the State and Nation as shall assure an ample and uninterrupted revenue.

The above, which differ but slightly from the conclusions arrived at by the author of the paper we are considering, are presented to the Club as the best the Section can do with a subject that is one of the most difficult that at present confronts the State, and we trust that the members of this Club will bring to its solution all the wisdom and mature judgment at their command.

G. W. DICKIE,
Chairman of the Section.

The discussion, which occupied several hours, covered a wide range, and was useful, mainly, in giving the Club a general idea of the problem. Very little of it bore directly on the points raised in the paper and the report, and that will be found reproduced in the reports of later discussions. The report and paper were recommitted to the Section of Commercial Interests.

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## Discussion at the July Meeting.

July 13, 1904.—The Section reported back the paper with its report upon it without change.

THE CHAIR (Vice-President Adams presiding): It is desirable that the Club now direct its discussion to the precise questions raised by the paper and the report of the Section. The question before the Club does not involve reference to engineering operations or law, except incidentally. Assuming that an attempt is to be made to effectually reclaim these swamp lands, the Club is simply endeavoring to ascertain what authority should control the work, and in what manner the cost ought, in equity, to be apportioned. It will be assumed that if equity can be found, law will find a way to enforce it. The paper before the Club assumes, with little argument, and no reference to authority, that effectual reclamation of the swamp lands of the Sacramento and San Joaquin can be accomplished only under the direction of an authority having jurisdiction from the sources of the streams to Suisun Bay. If this assumption is incorrect the conclusions of the paper and the report have no foundation and little value. For the purposes of this Club this is a question to be determined by authority. We have with us to-night two distinguished engineers who have had long experience in dealing with these overflowed lands, and are familiar with engineering opinions upon the problems. Commissioner C. E. Grunsky has been connected with the work almost ever since he was an engineer, and Col. W. H. Heuer has been the United States Engineer in charge of the river work for twelve or fifteen years past. I will ask Mr. Grunsky whether the assumption is correct that the engineering profession regards it as essential that the entire work be controlled by a single authority instead of by fifty or sixty independent Reclamation Districts as now.

MR. GRUNSKY: Mr. Chairman and Members of the Club: I wish to say that the Club should be very grateful to Mr. Adams for having presented so clearly the matter of the reclamation of the swamp lands from the economic standpoint. The better the problems are understood, the better we can see how we are to unify the various interests of the upper and lower ends of the valleys. Mr Adams has very clearly set forth how it came about that the individual land owner was thrown on his own resources. All the reclamation districts have had to defend themselves against the onset of waters, and they have partly settled the problem with which the engineers will have to deal. Shall the individual land owner continue to make works against the overflow of his land or shall some higher authority say to him, "we have a comprehensive plan for doing this and everything must conform to the general scheme of drainage?" We want the flood waters, brought into the valleys by rivers, to be carried into the bay without inundating the cultivated lands. Shall the various Reclamation Districts be allowed to do this, or shall the State, in conjunction with the Federal authorities, prescribe rules which will assure that all settlers are protected from inundation? The people who have received their lands from the Government and have paid for them should have their lands protected, and the Government owes it to the people to prescribe the best method by which this reclamation must be effected. It costs money and it is proper for the State to contribute to the work. There are also national interests involved and I think the Federal Government should assist. That brings me to the question I was asked to reply to—whether the swamp and overflowed lands of the valleys should be treated as a unit. If a scheme is devised by which the lands of the valleys may be reclaimed, it should be a comprehensive one for the drainage of both the valleys of the Sacramento and San Joaquin Rivers, and should be controlled by a single authority. I believe that to be the opinion of all engineers.

THE CHAIR: The question is upon the adoption of the first paragraph of the report of the Section.

MR. DICKIE: The problems to be solved and for which we have met this evening are such that they cannot be undertaken in a spasmodic way, but must be treated as a whole. I do not think this could be better stated than in the paper, viz.: That the State, in conjunction with the Federal Government, should undertake any comprehensive scheme that may be undertaken.

MR. WHEELAN: Owing to the fact that it was my pleasure to join with Mr. Dickie in the preparation of the report, I endeavored to procure whatever information I could. As a result I am convinced that if there is to be any successful reclamation it must be done under one system, and not by so many conflicting interests. The desire of one is not the interest of another and consequently there is no success for any. It is merely each individual working for himself alone. Each owner tries to protect that portion of land which belongs to him. He takes no account of the effect which his reclamation works or methods may have on his neighbors. The only hope we can have is to get under one system of reclamation that will apply from the head to the outflow of the rivers, and if we need any proof in the matter all we need to do is to look back during the past forty years. We know that the proceedings so far toward reclamation have been largely ineffective. The relief has only been obtained in spots because each district has tried to protect itself without any concern for the neighboring districts. It is necessary to have one definite plan under some definite authority for the reclamation of all districts alike.

MR. REED: (Mr. Reed, who was born on the banks of the Sacramento, where his family still has large interests, and who has been familiar with flood problems from his infancy, at this point read a paper covering many phases of the subject—some of which were not before the Club. Extracts from this paper will be given, as if spoken at the time, as they bear on the successive paragraphs of the Report.)

On the paragraph at this time under discussion, Mr. Reed said:

The existing districts are really a menace to complete reclamation and actually increase the danger of floods on lands not protected by levees. They are managed on the maxim "Each one for himself and the Devil take the hindmost." So long as all the levees hold, the water will keep getting higher until finally the inevitable break comes. Then the waters flow out on the lands thus exposed, while those whose levees have stood the strain are safe for the time being. In my opinion it is best to ignore existing districts when making plans for complete reclamation.

THE CHAIR: The Club would now be glad to hear from Colonel Heuer. It is understood that he prefers not, at the present time, to discuss any of the engineering problems involved.

COL. HEUER: I cannot talk on the engineering questions; you don't want me to. I have read Mr. Adams' paper over carefully, and I got more information from that than from thirty years' experience on the river. I agree fully with what Mr. Grunsky, Mr. Wheelan, and Mr. Dickie have said to-night. I think reclamation must be carried out by some authority that cannot be interfered with, and I think it can then be accomplished. I do not think any scheme likely to be formulated for reclamation can injure any one but will be beneficial to all. I think the Federal Government will not interfere with any proper schemes when lines are once laid down for keeping the water within the banks of the river, and which are carried out by legal authority, whether or not the banks can be left so far apart as to carry the waters at flood. I do not know whether or not it was stated by a member of this Club, but a little while ago I heard some gentleman state that the levees could not be built high enough to carry the waters at all times. I think the man who said it did not know what he was talking about, when he said you cannot carry the waters of the Sacramento. Even if you do have to build channels it will not interfere with the Federal Government. The Government will give you what aid you require for such work if that work don't injure navigation, and this cannot. The only thing is when you get people from the East to formulate plans for you they may not know all about reclamation, and reclamation is one of the big problems before you. When it comes to the question as to who shall pay for this, I do not know. It seems to me that the people are benefitted, a large proportion of them, and I do not see where the Federal Government comes in except in an indirect way. But I feel that from the head of navigation down to the mouth, that district must be entirely out of the control of any reclamation district.

MR. QUINN: Should not the National Government contribute something towards this reclamation?

COL. HEUER: We have got more water in the Sacramento River to-day for navigation purposes than we have had for forty years; therefore, why should the National Government interfere? The depth of the water of the Sacramento and San Joaquin Rivers is ample under all circumstances. It is all they would ask for in the East. The Ohio River has a range of seven feet; the upper Mississippi less. at low water. Neither of these rivers has as much as the Sacramento or San Joaquin. The Mississippi at St. Louis has five feet.

MR. REED: I have seen the boats in the Sacramento River at low water unable to move and have to transfer their load to a barge, and we have an idea those conditions could be improved. Could it not be improved by proper handling?

COL. HEUER: Up to two years ago boats got grounded and a board of engineers was appointed to take the matter in hand in order that they could have seven feet of water at low water, which they considered was enough to handle the existing commerce together with that in sight. Estimates were made that $280,000 would necessarily have to be expended in order to have seven feet of water in the river at low water mark. Congress appropriated $90,000, and allowed contracts to be made to the extent of $280,000; and we were authorized to take care of contracts to that amount. The contract was let for $15,000 to make an experiment on that particular place you speak of. We commenced and concluded that it would cost so much a foot. For this experiment we decided to put in the wing dam of 300 feet in length, but instead of 300 feet, we put in 100 feet further and found it scoured perfectly and you have not seen a boat ground since. Instead of the $280,000, which could have been had, we got it for $36,000; the difference was never called for as it was not necessary. We made our recommendations and asked for $53,000 or $54,000 for this experiment and that the difference be made available for the whole river. If Congress will give it, I do not think there will be any trouble with boats grounding there or above.

MR. SPRAGUE: I ask if wing dams would not retard boats?

COL. HEUER: To some extent they would, but they are only built a couple of feet above low water stage and the effect is this, that they deepen the main channel so much that the deep channel carries the surplus water and overcomes many difficulties.

A MEMBER: Would the aid extended by the Federal Government be based entirely on the interests of navigation?

COL. HEUER: I could not answer that question. I think it is possible that you are leading up to levees on the Sacramento River: if so, I put myself on record

and want to stay so, that if the Government ever commences building and maintaining levees on these rivers there will be more breaks than there are to-day. In answer to the person who suggested the idea that the Government might come to the aid of California without regard to navigation, I do not think the average person who does not read the miserable dry reports of engineers on these subjects appreciates the amount the Government has expended on this class of work in California; I think we have expended $584,000 on the San Joaquin River alone.

The vote was then taken on the first paragraph of the report of the Section and it was adopted.

The second and third paragraphs of the report were adopted without discussion.

Paragraph four, after some discussion, was amended by striking out the words "with power to assess only for maintenance and emergencies," it being concluded that so long as districts existed at all their powers should remain as they are. As amended it was adopted.

Paragraph five was adopted with the exception of the last clause.

## APPORTIONING THE COST.

Upon the last clause of paragraph five of the report—"with equal assessments on all lands"—the following discussion took place:

THE CHAIR: As some present may not have carefully studied the paper before the Club, I will try to state this question so that all may clearly understand the precise point at issue. All concede that in the case of ordinary special assessments—street improvements for example—assessments should be according to benefits received, and that the measure of benefit should be the difference in the value of each piece of land before and after the improvement is completed. It is claimed by the author of the paper, sustained by the section of commercial interests, that the obligation to reclaim which the Supreme Court has held to exist, and which, to its extent, is an impairment of title, makes the swamp lands assessable, not, necessarily, according to benefits, but in whatever manner the Legislature may deem best for redeeming the faith of the State to reclaim all the lands. This being the alleged liability of the swamp land owners it is insisted that the State must enforce the liability by equal assessment on all lands, lest it be found that the cost of some lands should prove more than their value when reclaimed and their owners abandon them rather than comply with their obligation, thus throwing that obligation back on the State to be redeemed by general taxation. The question involved in this paragraph is whether this contention is sound.

MR. GRUNSKY: I think the statement in the clause a little too positive. I think the expression should be changed to a less positive form.

Mr. REED: A large majority of the acreage of the swamp lands affected by this plan have no value except a speculative one. I have known of such lands west of Sacramento selling for seventy-five cents an acre, and the price by the thousand acres has been as low as $3.00 an acre. Whenever it is proposed to reclaim the lands the price goes up, but always remains at a low figure. Mr. Adams proposes to assess these lands at $20 per acre if it requires $20,000,000 to reclaim the million acres involved. That is, the larger portion of the lands involved shall be assessed more per acre than their present value. On the other hand, the wonderfully productive lands bordering on the river produce from $50 to $250, net, every year, and are valued at from $100 to $1,000 an acre. If they are to be assessed at only $20 an acre, how gross would be the injustice when they will only have to pay a fraction of their net annual income, while the other lands will have to pay much more than their entire value. The man who has a thousand acres of tule land which he has bought for two or three thousand dollars, and from which he derives no revenue, will have to pay $20,000 in assessments, while the owner of one of the productive orchards or asparagus farms, assessed at the same rate per acre, will only have to pay a portion of the first year's income. Such river cities as Colusa, Marysville, Sacramento, and Stockton, will be more vitally affected than even the reclaimed lands. The city of Sacramento is never safe from floods. The city may contain three of four thousand acres of land within its area, according to the equal assessment plan it would pay sixty or eighty thousand dollars as its total contribution to the reclamation of the valley, while it could really afford to pay millions for the benefits it would receive. The city of San Francisco is vitally interested in the Sacramento and San Joaquin Valleys. Double or treble their productiveness—nay increase it tenfold as will be done if this

million acres of fertile land is brought under full cultivation and relieved from the danger of disastrous floods—and who can calculate the increase in the business of San Francisco? Why, then, should not San Francisco bear some of the burden of an enterprise from which she is to profit so enormously? Let us take even a larger view. Why should not Los Angeles or San Jose or Eureka bear some of the burden? Will they not be indirectly benefitted by making the whole State prosperous? Will they not be benefitted much more by this State enterprise than are the cities of Indianapolis or Denver or Salt Lake by dredging the Sacramento River by the United States Government to improve navigation? If the Federal Government taxes the whole nation for the improvement of rivers and harbors why should not the whole State of California be taxed to reclaim this million of acres of fertile land? It is not too much to say that $50,000,000 net profit, annually, would be added to the wealth of the State, subject to taxation, and that the cost of operation would keep from twenty-five to fifty million dollars additional in constant circulation for the support of the population upon the reclaimed lands. If the whole State is to be largely benefitted by the reclamation of this million acres of fertile land it will be entirely equitable that the whole State should share the burden of the work.

COL. HEUER: Is it the intention to formulate a law to present to the Legislature? The Club must have some object in view or you would not take the matter up for such thorough discussion.

THE CHAIR: The Chair cannot undertake to forecast the policy of the Club, but it has been his personal idea that the Club could perform a useful public service by an impartial study of the equities involved, because if the public can see what is right it will endeavor to do it. Whether the Club shall engage in active promotion will be a matter for the Club to decide.

JUDGE DENSON: This strikes me as a very important matter. If we use the words "with equal assessments on all lands," we shall commit ourselves in advance, and I do not know whether that is the best way to assess the lands or not, but I do not think it is. I should prefer to use the words "on some equitable plan," and let the Legislature take the matter up and deal with it.

MR. SPRAGUE: It seems to me that the Club should not hesitate to express itself whenever it is able to reach a conclusion, in order to contribute its assistance to the solution of a very difficult problem. I think it equitable to assess these lands equally, for unless the proposed work be done they either have no value at all or have a value liable at any time to be destroyed by the overflow of floods. They are entirely dependent for value on a satisfactory solution of the reclamation problems. In reply to Mr. Reed's objection that some land is not worth two dollars an acre and other land is worth hundreds of dollars, and that therefore equal assessments are not equitable, it may be replied that it would be really the value after reclamation that would be assessed which seems to me exactly the proper thing. It is essential that all the overflowed lands be reclaimed in order that the obligation of the State may be redeemed, and the main burden should be borne by the lands whose owners, in their purchase, deliberately assumed the obligation to reclaim.

MR. DICKIE: This discussion seems to show that all the land has the same value after it is reclaimed; that is, the land loses its value by being covered with water and after the water is removed it resumes the value of the other land. As an illustration, if a ship were sunk, no matter what the value would be before it sank, it would be worthless under water if there were no means of raising it, but in comparison with the successful and economical means of reclaiming the ship from the waves depends the value of the ship and its cargo. So with the land; it is of little value unless it can be economically and permanently reclaimed. The lands overflowed with water may be of far the better quality. I think the latter part of the next paragraph, which is No. 6, really should take the place of the one we are discussing.

MR. DAVIS: The question may be raised whether the State has the right to pass a law making an assessment on any basis other than that of benefits received. The purchasers of these lands bought them from the State in good faith and have obtained patents without any conditions. Upon what ground, therefore, can they be assessed except upon the basis of benefits to themselves, and not to others?

THE CHAIR: We must not lose sight of the point that some of the lands capable of reclamation possibly could not, at present, be sold for cost of reclamation, and might never be reclaimed, except by general taxation of the State, if the more easily reclaimed lands are released from obligation in regard to them. The Club is endeavoring by this discussion to ascertain what is right—not what is law. Nevertheless, if the Supreme Court is to be believed, the power of the Legislature

to assess equally seems clear. (The Chair then read from the opinion of the Supreme Court in the case of Kimball vs. Reclamation Fund Commissioners. already quoted. See page 4.)

THE CHAIR: We have with us as a guest, Dr. Moore, who is said to be much interested in this subject. The Club would be pleased to hear from him.

DR. MOORE: This is a very important matter for the opinion of this Club will have great weight with the Legislature and the public. I do not think equal assessments are equitable, because there will be a great difference in the value of these lands after reclamation. There may be alkali spots, or land inferior from other causes, which are frequently overflowed, and are held by a swamp-land title. If the State had reclaimed these lands before selling it would have received less for these lands than for the better lands, and I think they ought to pay less towards the cost of reclamation. There may be small tracts, surrounded by good land, and necessarily reclaimed with the good, which are actually not worth reclaiming, and still have some value for pasture or similar use. I think all this should be considered. I do not think the Club ought to adopt this clause as it stands.

JUDGE LAWLER: There is much force in the suggestions of Dr. Moore. I trust that the result of our labors may have its effect on legislation, and if we can contribute anything to that it will be in trying to arrive at a definite conclusion in which we can all agree.

MR. GRUNSKY: I suggest another thought. It seems to be assumed that the usual process will be adopted of rendering assessments on lands payable as soon as reclamation is completed. I take it that these assessments would be distributed over a large number of years. The financial proposition that will lead to ultimate results is that some means will be found of collecting the total cost of the works from the land and be carried into effect by a system of taxation extending over many years. Possibly have the State assume the obligation and collect from the lands thus benefitted the cost of the work. There is nothing new about this; in other countries it is done all the time. When a work of this kind is carried out in a European country it is generally customary for the State to assume a proportion of the cost, we will say one-half, the other half is assessed to the lands and the various industries benefitted. The State advances the money and in a period of about fifty years the State is repaid. As to the amount that would be assessed to each person or land owner the tax-collector would have to determine that from year to year.

THE CHAIR: I have been much impressed by what Dr. Moore and some others have said, and would like to think the matter over more deliberately than is possible now. Several members have suggested that this paragraph be again referred to the Section for further study. That seems to be the general wish. Is there any objection to that course? Hearing none it is so ordered, and as many of those present indicate that they would like to attend such a meeting, notices will be sent to all members of the Club.

Some discussion followed on the remainder of the report, there appearing to be some division of opinion, first, as to whether the State ought to contribute anything whatever to the work, from taxation of the whole State, and secondly, whether, if it did so, it should endeavor to do so in collaboration with the Federal Government. As the hour was late, however, it was decided to refer all the remaining Sections, involving the financial plan, to the Section for further examination.

## Discussion at the August Meeting.

At the meeting of the Club on August 10th, 1904, the Secretary read that portion of the report of the Section as modified and adopted by the Club, as follows:

1. The State should resume entire control of all reclamation works on the Sacramento and San Joaquin rivers and overflowed lands in formal and permanent co-operation with the Federal Government by such organization as may best serve the interests of both reclamation and navigation.

2. The organization should be absolutely and by the most drastic legislation removed from any and all forms of political influence.

3. The engineering work necessary to carry out the extensive reclamation works contemplated should be placed in control of a Board of Engineers of the highest standing in their profession, who, in conjunction with the Government engineers in charge of the navigable river part of the work, should have full control until the whole undertaking is complete. The compensation should be such as will attract men of known ability and experience in works of this character.

4. The existing reclamation districts should be continued in existence until one after another they cease to be necessary, when they can dissolve under existing laws.

5. The State should erect all the swamp lands on the Sacramento and lower San Joaquin into one assessment district.

The clause "with equal assessment on all lands" and all the report following those words was referred back to the Section for further study and report.

THE CHAIR (Vice President Adams in the Chair): The discussion to-night will be upon the Report of the Section of Commercial Interests covering that portion of the conclusions of Mr. Adams upon which the Club has not yet passed. We have with us this evening, as guests, Major H. M. Chittenden, United States Engineers, and Mr. H. B. Richardson of the Mississippi River Commission, eminent engineers, who have been invited to counsel with our authorities on our drainage and reclamation problems. We have also Mr. F. D. Ryan, Commissioner of Public Works, and Mr. M. A. Nurse, Chief Engineer to the Commissioner of Public Works, and finally, Mr. William Hammond Hall, whose services and publications as former State Engineer of California are within the knowledge of all of us. So we have quite an array of distinguished engineers from whom we shall hope to hear during the evening.

## Final Report of the Section of Commercial Interests.

The Section of Commercial Interests then made its final report on the subject, as follows:

We suggest that the language of the first paragraph, already adopted by the Club, be changed to read as follows:

1. In order that the reclamation of the swamp and overflowed lands of the Sacramento and lower San Joaquin may be properly accomplished, and in order that the State may fulfill its obligation to reclaim these lands, the State should assume entire control of the reclamation, in formal and permanent co-operation, under such organization as may be deemed best, with the Federal Government, which has charge of the interests of navigation.

We recommend that the remaining sections be made to read as follows, the only important change being in paragraph 5 in regard to the basis of assessing the swamp lands:

5. The State should erect all the lands held under a swamp land title into one reclamation district, and all lands in that district should be assessed for the cost of the complete reclamation system (including necessary auxiliary channels), less the sum contributed by the State and Federal Governments. The assessment should be levied from year to year as the work progresses, in proportion to the valuation of the lands shown on the tax assessment rolls of the counties in which the lands are located. To each of the existing reclamation districts due credit should be given for the estimated values of any part of the construction turned over by them that can be utilized in the plan of reclamation, and such construction should thereupon become the property of the State.

6. The State should levy a tax of 1 cent on the hundred dollars for ten years, conditional, if possible, on the pledge of an equivalent sum for the same period from the National Treasury, with the understanding that the first object in the expenditure of this fund should be the rectification and deepening of the channel of the rivers and such disposal of the material removed as should involve no danger to the interests of navigation in navigable waters elsewhere.

7. For the purpose of making the burden on the reclaimed lands as easy as possible, while fulfilling its obligation to reclaim, the State should issue bonds as required for such part of the work as cannot, in reason, be borne by annual taxation; the bonds to be issued without conditions in order to secure a low rate of interest, but under a law which shall require principal and interest to be paid from the proceeds of the assessments levied on the Reclamation District, and no bonds are to be issued until the validity of the assessment shall have been sustained by the Supreme Court. The bonds to run for such period as may be deemed best, provided that complete redemption be effected within forty years.

8. After the completion of the plan of reclamation the cost of maintenance from year to year should be assessed upon the lands of the Reclamation District in proportion to their valuation upon the Tax Assessment Rolls of the county in which they are located.

Respectfully submitted,

G. W. DICKIE, Chairman.

MR. ADAMS: As the author of a paper upder discussion is usually given, towards the close of the discussion, an opportunity to defend himself, if he can, or recant, I wish to say that discussion in the Club and Section has convinced me that I must modify my "tentative conclusion" in regard to assessments, as given in the paper, as follows:

Instead of equal assessments on each acre, regardless of value, I think the assessments should be according to value of the land when completely reclaimed. This would be the precise distribution of the burden nad the State reclaimed all before selling, and I think the nearer we get to that the nearer we shall get to equity. I cannot concur with those who think that tule lands which will be highly valuable when reclaimed should be assessed at the merely nominal value which they now possess. I think their reclaimed value should be estimated and the assessment made on that basis. If that is not done, some extremely valuable lands will be reclaimed for their owners at the expense of other people. I still hold, of course, that all lands held under swamp land titles should be held assessable to the extent that public policy requires, for the complete reclamation of all swamp lands, and do not think they should be assessed according to "benefits," if by benefits is meant the difference between present and reclaimed value, because that might excuse some rich land, now valuable because seldom overflowed, from its just contribution, and might impose on some other land a burden greater than it can bear. I wish to be recorded as for assessments according to value when reclaimed. On my other tentative conclusions, as modified by the first Section report, I stand pat, except in so far as my conclusion, relating to island lands, is covered by assessments according to reclaimed value.

In the course of Mr. Reed's remarks he asked a question which was not answered in the discussion at the July meeting in what seems to me the most convincing way. "If," said Mr. Reed, "the Federal Government taxes the whole nation for the improvement of rivers and harbors, why should not the whole State of California be taxed to reclaim this million acres of fertile land?"

There are two sound reasons why it should not. First, the rivers and harbors are improved for the direct benefit of any citizen who may choose to navigate them, and a common benefit is received in the reduced cost of transportation, while these lands would be reclaimed for the exclusive use of their owners. Secondly, the land was purchased from the State, as the Supreme Court has held, under an obligation to reclaim. Let the owners redeem that obligation.

I think the State and nation are under obligation to assist in reclamation to the extent of restoring the channels which they have permitted to be impaired to their original carrying capacity as it existed when the swamp lands were sold. I also think that, as a matter of policy, and regardless of obligation, it would be profitable to the State to contribute to a moderate extent, just as the United States, as a matter of policy, and not of obligation, is contributing toward the reclamation of the Mississippi swamp lands.

The first recommendation of the Section for changing the language of paragraph was adopted without discussion.

THE CHAIR: The question is upon the adoption of paragraph No. 5 as reported by the Section.

MR. REED: The report of the Section recommends one assessment district, to be assessed yearly, according to the value of the lands as borne from year to year on the assessment roll. It also provides for issuing State bonds in aid of the work It seems to me that the campaign for obtaining the bonds would bring the entire subject before the people and the method of assessment could be determined then. It is impossible to do the work unless State bonds are issued and it seems to me unjust to assess the cost on the lands to be benefitted in the manner proposed by the Section. We have reclaimed 800 acres just out of the city of Sacramento. On the river front the land is worth $1000 an acre. Further back it is worth $5, $10 or $20 per acre. Now, you are going to assess the cost on this land as the work progresses. Say that it will take three years. The first year we pay on the valuation of $10 or $20. When you are ready to raise a crop it is worth $100 to $200 per acre. Take a man with 3000 acres worth $5 to $10 per acre, and he is made to pay for the work as it progresses. There is no way for him to get anything from the land, as he cannot farm it or work it. When you have the land reclaimed you can afford to pay such an assessment. I submit that Mr. Adams' conclusions are well taken. It seems to me that the value as reclaimed is the only thing that can stand the tremendous burden of reclamation. The value of reclaimed land is from five to ten times its present value. I think we should consider that when the State issues bonds to pay for this work and that these bonds are secured by the reclaimed lands and that we shall have a means of raising the money and securing the payment of the bonds. It will be very easy for the people who own the land to meet their payments, as they will spread over a long period of time. If, after reclamation, one reclaimed district of the Sacramento and San Joaquin bore taxation according to the assessed value fixed by the Assessor of the county, it would be just and equitable, and there would be no difficulty in getting the money, as it would give time to the owners to raise it.

MR. WHEELAN: It seems to me that what Mr. Reed wants is that the property shall be assessed upon its final value when reclaimed and that it should not be assessed from the assessment roll of the county as the work progresses. It seems to me that is the only proper way you can do it. Every one can tell what is. But to tell what is to be takes the seventh son of a seventh son. What the value of any land in that district is going to be when it is reclaimed, who can tell? As the work progresses, and value is added, there is no trouble about it. It is in plain black and white. The only equitable way is in accordance with the benefits that have already been added to the land from year to year. As these bond payments fill be carried along for forty years, any land will come pretty close to paying its just proportion of the expense. The value of the work you have already done to the land will appear from year to year on the tax assessment roll of the county in which the land is located.

MR. SPRAGUE: I move to substitute the following for that portion of paragraph 5 which relates to method of assessment:

"The assessments should be levied in proportion to the valuation of the lands in such drainage district, to be determined after this system of drainage and reclamation shall be completed."

In supporting this amendment I wish to add two or three things. In the first place, as it has well been said by Mr. Reed, that the burden should be borne by the valuation of the lands when value has added to them by this work of reclamation. The present valuation of many of these lands is very small. I understand that it would be entirely possible to provide for the payments of these bonds, which shall be issued and guaranteed by the State through taxation of the lands when reclaimed. No one would hesitate to buy these bonds if they were sure that all these lands, to which such magnificent values had been added, were held for security. It would not be necessary to raise this money beforehand by taxation. These lands

cannot now be taxed in any proportion which would provide for such vast reclamation. I am in favor of placing the burden upon the lands according to the valuation when reclaimed.

MR. REED: The State is to issue the bonds for $20,000,000, or whatever is necessary to do the work. The money is immediately available. The State provides that the one reclamation district shall be responsible for all of the work. The question is, when shall the money be chargeable upon the land? As the reclamation progresses, or when it is finished? The people who buy the bonds look to the State only for their money. When the work has been finished there will be $20,000,000 to get out of these lands, and when the work has been finished let the State begin to tax them the money it has advanced previously to do the work. The lands when reclaimed will pay the cost of reclamation.

[Note.—It is proper to call attention to the fact that nobody yet knows for what sum it would be necessary to issue bonds. The paper and the report of the Section propose that the State and the United States shall be asked to contribute substantial sums to the work, which would make the bond issue so much less. They also contemplate that individuals and districts shall receive credit for existing structures completed by them. This would amount to a very large sum. Even if the total improvements when completed should represent a total expenditure of $20,000,000, the necessary bond issue, after the large credits and reductions proposed by the Section, could hardly reach anything like half that sum.—Editors.]

A MEMBER: How do you propose to pay the interest on these bonds during the time they are running?

MR. REED: The State issues the bonds and pays the interest. When the work is done then these lands can pay principal and interest.

MR. MANSON: Would not that be loaning the credit of the State to the district, and is not that forbidden by the Constitution? The Constitution would have to be amended.

The Chair then called upon Wm. Hammond Hall, former State Engineer, who made an interesting address, recounting much of the earlier history of reclamation legislation in California. In regard to the matter under immediate discussion, Mr. Hall said:

I have always regarded the protection of these lands from floods as a public duty. The rains and snow which cause them fall upon the great mountain water sheds, which are mostly the property of the State and Nation, and it seems to me a public duty not devolving solely on the lower lands which are flooded, but upon the State at large, and perhaps the Nation, to provide channels which shall carry these floods to the sea. The lands should certainly be assessed, but they should not bear the whole burden. In France the General Government contributes about one-third, the department one-third and the land reclaimed one-third. In Italy the cost has been borne sometimes wholly by the State and then assessed upon the land. The lands pay one-half and the General Government about one-half. In Holland the land is usually taken over by the Government and improved at public expense and then sold. Any attempt to carry out this work wholly at the expense of the land to be reclaimed will be a failure.

MR. MILLS: The value of the land will not reclaim it, and therefore some outside help—something in addition to the value of the property—will have to be applied to effect a saving of the land.

A MEMBER: This section provides at first that the State should erect all the lands into one reclamation district. The proposed amendment contains a provision that the valuation for assessment purposes should be the valuation shown by the assessment rolls of the counties. The basis of assessment should be placed by one body over the entire district—perhaps the State Board of Equalization.

MR. HILLYER: I do not think that you can pass an amendment which will assess the burden on lands not directly receiving the benefit of these improvements, under the Constitution of the United States.

Mr. Sprague's amendment was then carried.

THE CHAIR: The question is now upon the adoption of paragraph 6 of the report of the Section.

MR. REED: I moved last time that that section be stricken out for this reason, that if the State is to pledge its credit the State should assume the whole burden and then make the land pay its burden. It has to be done by a bond issue,

so put it all in a bond issue. I believe the State should pay one-third or one-fourth. Let it be raised by a bond issue and not on a taxation valuation.

MR. MILLS: You do not know what amount we should levy. What is the proper amount? We should get some knowledge on the subject as to what the State should be expected to levy or pay. The Club is actually undertaking to say that the State's share shall be limited to this assessment, and if that should not be enough and the whole scheme should fail, we are planning a scheme which means failure, and therefore I am in favor of striking the paragraph out until we know the exact amount the State is expected to pay.

MR. SBARBORO: I believe that could be settled by asking the United States Government to contribute one-third of whatever may be necessary, the State the same and the property-owners the same.

MR. REED: I move that it is the sense of the Club that the State shall contribute from its treasury one-third the cost of reclamation.

The motion prevailed and was equivalent to striking out paragraph 6 and substituting a new paragraph in accordance with Mr. Reed's motion.

THE CHAIR: The question is upon the adoption of paragraph 7 of the report of the Section.

MR. REED: I move to strike out the paragraph.

MR. NAYLOR: The paragraph does not provide a complete method of testing responsibility for the bonds. We may issue the bonds and test them and find them all right. When we come to levy assessment on reclaimed districts it may be decided that the assessment is unconstitutional and this section provides that the bonds shall not be issued until the validity of the assessment is passed on by the Supreme Court.

MR. SPRAGUE: This is a question of such importance that it is well worth while to secure an amendment to the Constitution which shall be sufficient to issue the bonds without any possible question by the Supreme Court as to its validity. This particular paragraph had better be stricken out, and I second that motion.

The motion prevailed and the Club adjourned without action on paragraph 8.

# Discussion at the September Meeting.

THE CHAIR: There was to be some additional discussion on the report on swamp land reclamation. Mr. R. B. Hale had promised to say something, but having been called out of the State, sends the following letter on the general subject:

"I am very sorry that it will be impossible, on account of my leaving for the East Monday morning, to avail myself of the opportunity of saying a few words before the meeting on Wednesday of next week—not that I would offer anything of unusual value to the different members of the Club, so much as that this opportunity is the result of a conversation held between Mr. Adams, Mr. Jennings and myself on our recent trip to Sacramento, where the purposes of the Club, its aims and future usefulness were very generally discussed, and I am sorry to be the one who is the first to disappoint those who have been instrumental in bringing before our Board of Governors the suggestion that the discussion of any subject be deferred until the meeting following its original presentation, and that ten members be prepared with five-minute talks to open the discussion.

There is one matter in regard to the reclamation subject which, though it has been touched upon many times, is still a matter of the utmost importance, particularly to those residents of our State who are dependent upon levees for protection, and that is, that the careless, indifferent, parsimonious neighbor should not be permitted to allow bis levee to endanger the property of his more thrifty neighbor, and for this reason the State should have the absolute control of repairing and building of all levees, and the State should assume the responsibility to such an extent that the resident will be financially protected if damaged through the carelessness or negligence of the State's employees.

"The State stands ready to spend all the money necessary to prosecute the man who steals his neighbor's horse, but she absolutely ignores the one who allows his levee to become weakened and thereby destroys his neighbor's entire crop, washes away his buildings, and ofttimes sets him back several years in the development of his property.

"Before any definite action can be determined upon, it is necessary for us to await the report of the engineers who have been going over these sections, but that something can and must be done, and that it will cost a large amount of money, is so self-apparent that a word in regard to finances may not be anticipating the subject too far.

"There are a number of different theories in regard to the raising of the fund. In my judgment the United States should be called upon to pay a substantial part, because of the fact that they have allowed our rivers to be filled up with debris from hydraulic mining. The State should contribute a part because of her obligation made at the time these lands were ceded to her from the Government, and the lands themselves should be made to contribute a part because of the benefits to be immediately derived to their owners by their reclamation. Just how the apportionment should be made and just how to bring about this combination of contributions is a problem that our attorney members of this Club should be requested to solve. The ordinary laymen can say what result is desirable, but the method of procedure is quite another matter."

THE CHAIR: As the matter was left the question seems to be on the adoption of the last paragraph of the report of the section, dealing with the distribution of the expense of maintaining the work after its completion. Perhaps Mr. Adams can state the matter so as to make it clear.

MR. ADAMS: I do not wish to discuss the question in any way. The club has recommended that there be one assessment district, and it does not seem to me open to question that the cost of maintenance should be assessed on the property of the district in the usual way, as provided by the paragraph before the club.

MR. CUSHING: I am opposed to the paragraph as it stands now. I think it proper that the cost of maintenance should be assessed on the property of the district, but I do not think we should leave in the words "in proportion to their valuation as borne upon the assessment rolls of the counties in which they are located," because the assessors of the different counties might assess land of the same value at very different rates.

MR. ADAMS: We might stop at the word "valuation."

After suggestions by Messrs. Cushing, Lawler, Wm. Denman and Walcott as to the proper form of drafting the section, upon motion of Mr. Walcott the section was corrected and adopted to read as follows:

"After the completion of the plan of reclamation the cost of maintenance from year to year should be assessed upon the lands of the reclamation district in proportion to their value as established by a uniform system of assessment within the district."

MR. ADAMS: I wish to make a motion, on which I should like to hear some discussion. The club at the last meeting took action with which I cannot agree in regard to sections 6 and 7 of the report of the section. Being, unfortunately, in the chair, I could not well oppose the action, and I wish to move to reconsider. I wish to do this, not because I am particularly anxious as to how the club votes, but because I do wish to get into the record a concise statement of all the arguments which occur to any of us on all sides of all questions, that they may all have such weight as there is reason in them. I therefore move to reconsider the action of the club in changing section 6 of the report of the section to an expression of opinion that the State should bear one-third the cost of reclamation and striking out section 7.

Carried.

MR. ADAMS: I now move to restore paragraphs 6 and 7 as reported by the section, with slight modifications, so that they will read as follows:

"6. The State should levy a tax of one cent on the hundred dollars for ten years, or so much thereof or so much more as may be required to put the channels of the rivers in the condition in which they were in 1850, and provide an outlet below Rio Vista for any flood waters which may come down. Such tax to be conditional, if possible, on the pledge of an equivalent sum from the National treasury, with the understanding that such fund shall be expended for the rectification and deepening of the channels of the rivers and such disposal of material removed as shall involve no danger to the interests of navigation elsewhere.

"7. For the purpose of making the burden on the reclaimed lands as easy as possible, while fulfilling its obligation to reclaim, the State, should the owners of the land so desire and if it should seem necessary, should issue bonds as required for such part of the work of reclamation as cannot in reason be borne by annual taxation; the bonds to be issued without conditions in order to secure a low rate of interest, but under a law which shall require principal and interest to be paid from the proceeds of the assessments levied on the Reclamation District, and no bonds are to be issued until the validity of the assessment shall have been sustained by the Supreme Court. The bonds to run for such period as may be deemed best, provided that complete redemption be effected within forty years."

The object of the insertion of a few words in paragraph 6 is to more definitely indicate that general taxation is for river improvement only, and the words inserted in paragraph 7 are to indicate the willingness to issue bonds should they be needed. Good engineers have told me that the land owners would need no bonds if the main channels were put in good condition.

In support of this motion I wish to say that since the last meeting of the Club I have passed over the San Joaquin River as far as Stockton, the Sacramento as far as Chico Landing and the Feather River for some distance below Marysville. I have seen the enormous deposits of debris, and travelled by carriage and by rail over typical districts of the lands subject to floods. All this was done under the most favorable conditions for obtaining accurate information and in constant company with land owners who have fought with the river for years, and all that I have seen and heard has strengthened my conviction of the soundness of the conclusion of the section. When I see the fertility of these lands and the measure of success which has attended the efforts at reclamation, I am astounded that it should be proposed that anyone but the landowners should be taxed for their reclamation. I have no faith whatever in the doctrine set up by one of our guests at the last meeting that it is the duty of the general taxpayer to protect these fortunate landowners from the power of the Almighty, as manifested in the rain and snow deposited on the watersheds of these rivers. The land is abundantly able to bear the cost of its own reclamation. More than that, the progressive land owners do not ask such aid. I saw no important land owner who expected it. The real sentiment of men who have expended hundreds of

thousands of dollars in reclamation work is expressed in the following paper, which was circulated on the boat by a large land owner, who was present, and signed by every swamp land owner on board, representing many thousands of acres:

"State and Federal governments, at joint expense, to improve the channels by removal of shoals, removal or control of detritus, rectification of alignment and widening where necessary for passing floods, having regard both to navigation and reclamation. Levees and interior drainage to be a charge on reclaimed lands."

Signed by John A. Ferris, E. W. S. Woods, J. C. Wood Jr., Francis G. Dwyer, Jesse Poundstone, Thomas Schad, J. Warrens Dutton, L. F. Moulton, Samuel Frankenheimer, R. B. Marshall, W. Lovdal, F. H. Harvey, Edward F. Haas.

All these gentlemen are large swamp land owners except the last, and he is an engineer thoroughly familiar with the situation.

But while I am perfectly convinced that the land can bear the burden of its own reclamation and should be made to do so, I am equally sure that the State at large owes a duty to these land owners and to itself to restore the channels which it has permitted to be filled up, to enlarge the openings to the bay and to remove and keep removed the shoals which obstruct navigation and raise the flood plane from Red Bluff to Suisun Bay. The reasons for this belief are set forth on page 19 of the paper with which this discussion opened and will not be repeated here. In this duty the Federal Government has an equal share, and two members of Congress have assured me that in their judgment when the matter is properly presented Congress will recognize the obligation and act promptly upon it. And I would fulfill this obligation in no niggardly spirit, but with ample generosity, remembering that the land owners have suffered by our fault for many a year. As to the amount, a most competent engineer with many years of experience in successful reclamation work on the river informed me that in his opinion about $3,000,000 would be required for the part of the work to be done at Government cost—an opinion which he has since confirmed after reference to data in his possession. It will be noted that the tax recommended by the section would produce just about the State's half of that expenditure, and therefore I believe the report of the section should be adopted as it stands, or as corrected. And I favor it, not merely because it is just, but because it is expedient. In my judgment no greater injury could be done to the cause of reclamation than to let the idea get abroad that it is proposed to tax the general public to reclaim rich land belonging to other people.

Incidentally I may say that in talking with practical men I found no apprehension of difficulty in determining the value of reclaimed land before reclamation. It is, in fact, constantly estimated by those who are reclaiming. You can see whether the land is peat, sediment or gravel, whether there are alkali spots, the depth to hardpan where there is any, its situation with reference to transportation and markets, and any special local conditions as well before reclamation as after. You can tell what the land will do if the water is kept off from it. There are no practical difficulties in the way of assessment according to reclaimed value.

MR. WM. DENMAN: A good many of us were not present when the reasons were presented for striking out the amendments by Mr. Reed. I do not think we should vote without hearing why the action was taken.

Mr. Reed's argument at the August meeting was then read.

MR. JENNINGS: I think at the last meeting of the Club it was generally thought that a concensus of opinion had not been reached by the Club and that further discussion should be had on this matter and particularly as to the amount the State and the National Governments should be asked to contribute towards this work. As we all know, there is here at present a Board of Engineers who are looking into this matter in a very comprehensive way. There have been various stimates as to the cost of reclaiming the lands of the San Joaquin and Sacramento Rivers. No one knows how much that will be. These engineers in their report will give an approximate estimate of the cost the work can be done for, and it would appear to me this Club is going too far at this time to state how much the Government and State should pay. I think we should first have the report of the engineers and work from the landowners to the Government than vice versa. I think that if this Club would go on record in some such way that it would help the work and bring about just what we are working for, and that is to have the work done. I would like to see that section 6 read like this: "The State should levy a tax conditional, if possible, on the pledge of a sum from the National Treasury." I do not think we are in position to discuss the amount.

MR. DENMAN: Say it required $200,000,000, and on investigation we find the land could only stand an assessment of $30,000,000, and the owners should pay the balance. We cannot determine anything here with regard to that. We must have first the total cost and how much the land can stand, and we must dispose of this before we can go into anything else. What is the value of our suggestion of one-third in the face of facts? We may show that the lands could stand one-third. Is anybody here able to say that the land can stand one-third? It might mean that one-third would mean confiscation of the land. If so, the whole thing would fail. How can we, at this time, a committee of forty or fifty, determine a question of that kind without any facts before us? What is the value of our suggestions under such circumstances? I do not see it has any rational value at all.

MR. ADAMS: Is there any difficulty in our determining that a portion of the work, whatever it may be, belongs to the State? We do not know what the cost may be possibly, but we think we know what part the State or National Government should bear.

MR. WILLIAM DENMAN: We can state that the State's duty should be to clear up the channels.

MR. DENMAN: I suggest that we strike out the words "one cent on the hundred dollars." We do not know whether it should be one, two or three cents.

MR. ADAMS: Mr. Ferris, the engineer to whom I have already referred, and who has had large experience on the river, thinks that that is about what would be required; but my motion says "one cent, more or less."

MR. DENMAN: Then the substitute is that we ask the Federal and State Governments together to improve the channels, etc. We do not make any suggestion as to what the property should bear in this section.

MR. ADAMS: I would like to hear from one of our guests, Mr. Frankenheimer, who is a large landowner on the river.

MR. FRANKENHEIMER: I have nothing to add to what has been stated, except that I quite agree with Mr. Jennings in that you should defer stating anything definite as to what sbould be required from the State or National Governments until we get a report from these engineers, who are exceptionally competent men on this subject. I believe no one would take exception to the document signed on the river boat, as Mr. Adams stated; that is, that all the outside work be done by the Government, and anything that would directly benefit the land would be done by the landowner. The landowner, when he is benefited, would pay. The outside work benefits navigation. On the Mississippi River the Government has spent a good many million dollars and in the Senate Committee investigation that was held it was shown very definitely, and it was not objected to by the committee, that the work was for reclamation. There was some attempt at first to show that it was for navigation only, but that plea was discarded almost from the start. But it was acknowledged that it was both for reclamation and navigation.

MR. DENMAN: The outside work will benefit the land largely. When you want to draw a line between the benefit to the land and for the outside work you can not draw a line. The great bulk of the benefit is to the land. We are assessing our charges on the land benefits and whatever other benefits we may get in. In California almost the entire benefit is confined to assistance to the land.

MR. FRANKENHEIMER: By outside improvement I mean the rectification of the channel. That does not mean the reclamation of the lands; simply to get the water in the way it was before the State took hold of the lands.

MR. DENMAN: There will be a benefit to lands not in the districts, for the river carries their products and also benefits the lands that are in the districts for the carriage of their products. Your line of assessment lies between the benefits to lands in and not in the districts.

MR. ADAMS: The State owes it to the landowners to take out of the channel all debris it put in.

MR. DENMAN: The principle on which you will work is benefiting the lands in the section. You can go to the people of the State and say all the work done on the river is outside benefit. All the work done on the lands themselves is for the benefit of the lands. The benefit to the river is very largely to the benefit

of the lands of the district. You can say to the people of the State we are benefiting the State.

MR. JENNINGS: Why is it necessary to just demand an equivalent amount from the Federal Government? We have left out all consideration of the fact that the Federal Government in allowing the auriferious lands to be taken up is directly the cause of filling up the rivers, and I think that if that matter was properly presented to Congress it would stand a big chance of getting more than an equivalent. I move to strike out the word "equivalent" and substituting for it the word "liberal." There is one other point in Mr. Adams' paper I think should be eliminated. He speaks of an outlet at Rio Vista. I do not think that should go into it. I think the way the section originally read is the best way. I will read this section. (Reads original section.) I think that is all we want to go on record for. Perhaps it would better be changed to read: "The State should levy a tax and United States aid be secured with the understanding that the object in the expenditure of this fund should be the rectification and deepening of the channel of the rivers and such disposal of the material removed as should involve no danger to the interests of navigation in navigable waters elsewhere."

MR. LAWLER: For many years there was a very sharp contest waged in this State between the farmers and the miners over the debris question and very deep feeling was raised. It occurs to me that in the presentation of our views that may be formulated here that the discussion throughout that section of the State at least will partake of a partisan character. It has been suggested here that it is due to those who happen to own lands within this prescribed territory that the State should restore these waters to the condition in which they were in 1850. There are two principals liable for the present condition of these rivers. First, the Federal Government in throwing open to occupation by miners the lands of the United States, and then that the lands were occupied for mining purposes, and that the State was a party who gave countenance to that sort of thing. Why would it not be better for us to proceed directly without regard to the fact that the lands would be reclaimed to ask the State and Federal Governments to restore the rivers to their original condition? Section 8, which follows, proceeds to speak of the maintenance. (Reads section 8.) Whatever expense might be incurred in the way of restoring the lands I apprehend would be very slight, and that would fall directly under the terms of section 8; that is, the cost of maintenance.

MR. DENMAN: If these lands are reclaimed the water that would cover them would fall into the channels by the building of levees. There has been a very large area that has acted as a reservoir to hold the flood waters that come down. This will bring in the valley that extra supply of water, and this would increase the burden of the parties at the lower end of the stream, and there should be something given to them to compensate them for the extra burden.

MR. LAWLER: I think this movement should be presented with some reference to past conditions in the region to be affected by anything we may initiate here. I was wondering whether the consideration of this matter could be divided into two general principles. First, that the State and the Federal Governments should restore the rivers to their normal condition without regard to the benefits that might occur to the lands along the river. That this situation below Rio Vista might be worthy of action on the part of the State, supplemented by action by the Federal Government. The rivers of the State are of moment to everybody. That seems to me to be a matter that appeals directly to every part of the State. On the other hand, we should take up the reclamation and have that for the burden on the landowners. We should not bring in anything of the past that the miners or the Federal Government is responsible. Merely say we must restore our rivers and treat the reclamation of the lands as a separate and distinct matter.

MR. BENTLEY: I think Mr. Jennings' motion is proper for this reason. I do not see why we should necessarily commit ourselves to having the channel restored to the condition prevailing before 1850. The channel in 1850 is not necessarily what engineers would recommend. We are willing to charge the burden of the filling up of these channels on the hydraulic mining. To be sure, that is largely responsible, but as a matter of fact during the past 15 years when there has been no hydraulic mining the sediment has continued to come, and still is coming, and on that account the Government is perhaps more responsible than the State. The channel should be kept up all the time by the National Government.

MR. JAMES DENMAN: I desire to endorse the substitute by Mr. Jennings and what Judge Lawler has said. I have traveled some in my life, and in Europe I find it is a governmental duty to protect navigation in the rivers. The United States has adopted the same principle, and we should not connect reclamation of land with the navigation of the rivers. Mr. Jennings' resolution simply relates to the navigation of the rivers. I am in favor of Mr. Jennings' motion to restore the river to a navigable stream.

MR. WALCOTT: The discussion at the last meeting was that we had to go before the people of California and get money. Here we advocate two schemes, one by tax and the other by bonds. We will find it doubly difficult in carrying this before the people where we try two methods, whereas it would be very much easier to get the money by one method, preferably by bonds.

THE CHAIR: The question is upon the adoption of the substitute proposed by Mr. Jennings.

The substitute was carried and section 6 made to read as follows:

"The State should levy a tax and aid from the United States be secured, with the understanding that the object in the expenditure of this fund should be the rectification and deepening of the channel of the rivers and such disposal of the material removed as shall involve no danger to the interests of navigation in navigable waters elsewhere.

THE CHAIR: The question is now upon the adoption of the amended paragraph 7, as proposed by Mr. Adams.

MR. ADAMS: The expense of leveeing this land will not be any such sum as has been imagined and would be willingly borne by the land owners, and no bonds would probably be required. I do not think you should burden lands that are ready to pay cash.

MR. JAS. DENMAN: I am opposed to this resolution. Whatever expense is necessary to make them navigable I think should be paid by the taxpayers generally. Here is something to benefit private owners who bought most of this land for $1 an acre. They want the State to issue bonds to make their lands they paid $1 an acre worth ten times that amount, or $100, $200 or $300 an acre. It is a case where they want the taxpayers to pull the chestnuts from the fire.

A MEMBER: The State would not pay any money, but simply loan its credit.

MR. JENNINGS: It is contemplated, I believe, and as we all know that this work shall be done under a comprehensive plan. It has been demonstrated that individual work of protecting lands from overflow is of no value. In order to have this plan the State must assume authority over the land, and there is no better way for it to assume such authority than to issue bonds. The State will have a lien on these lands until redeemed, and they will have a value when redeemed just as much to the State as to an individual. The State does not take any risk in this matter. The only objection I have to Mr. Adams' motion is the exact phraseology of it as to these land owners that do not require bonds and those that do.

MR. YOUNG: Do you not think it unwise for this club to put itself on record as saying that the State should loan its credit when it is understood to be against the constitution?

MR. ADAMS: It has seemed to me not impossible that if the State should become the actual owner of the levees, bonds might be constitutionally issued if the necessary popular vote could be got. Possibly it might be so in any case. Section 31 of Article IV of the Constitution forbids "the Legislature" to loan the credit of the State, but does not forbid the people themselves from doing so. To the layman Article XVI of the Constitution seems to authorize the Legislature to propose to the people to issue bonds for any "single object or work to be distinctly specified" in the law, and to make such bonds valid if authorized by a majority of the electors voting thereon. I do not know what court decisions there may be. Those are questions for the lawyers. There would be no objection to adding to the section the words "and we favor any necessary constitutional amendment for accomplishing this purpose." For the last two years those who have been most active in promoting comprehensive reclamation have assumed that an issue of State bonds, to be paid off by assessments on the reclaimed land, would be essential, and I so assumed at the beginning of the discussion. Since I have become convinced that no bond issues for reclamation purposes would be likely to be required, I have regarded bond discussion as largely academic. Still, I have thought,

and still think, that it would be well enough to express our willingness to issue bonds if land owners desire, and it should seem best to the Legislature—and also if it should appear that valid assessments on the reclaimed lands could be made for the redemption of the bonds, which it is for the lawyers to determine.

MR. LAWLER: It seems to me that proceeding to present to the State a scheme of reclamation where there are no available funds to carry that scheme into effect would be to put the club in a weak light before the public. We might initiate a movement here looking to the adoption of a constitutional amendment to secure the reclamation of the lands in the State of California, but I do not think we should go any further than that in the line of a scheme of reclamation in the present state of the Constitution. I do not see any reason why we cannot take up the scheme of improving the rivers on the lines of section 6. The farmers in the interior express themselves as being able to handle the reclamation of the lands if the rivers are put into proper condition. The financial phase of the reclamation is not possible in view of the present Constitution, and I think we should drop it. I think we should take up the question of the improvement of the rivers and leave out reclamation. If you do otherwise you meet opposition from all over the State and would bring up a revival of the old feud between the miners and farmers throughout the State in the early days. You start out to-morrow with a scheme of reclamation and ask the Federal Government to improve the rivers, and at the same time that the land be reclaimed, and you will see whether or not you can accomplish anything. The rivers are a matter of State and Federal concern. We have the right to ask that the rivers be put into proper condition.

A MEMBER: Unless you take this as a whole, it cannot be made a success, and in improving the rivers it is not possible to separate the reclamation of the lands from the improvement of the rivers. It is impossible to separate the two schemes and say improve the river and later on say reclaim the lands. It is just the same as if Mr. Lawler starts to-day and builds a foundation for a house and says ten years from now I want to build a house here.

MR. GATES: I agree with Judge Lawler that there is a good deal of confusion, at least there is in my mind. In theory the Judge's proposition seems to be the right one, but in practice I do not see how it can be carried out. In digging this debris out of the river there must be some disposition made of it. I do not see how that can be done without some one scheme. How can we carry out the one scheme of cleaning out the rivers without using that same dirt to build the levees? If we follow, or, rather, if we carried out that plan of separation, then the first clause that we have adopted would be entirely inconsistent with the whole proceeding, because we start out with this purpose "in order that the reclamation may be properly accomplished and in order that the State may fulfill its obligation to reclaim these lands, etc."

MR. YOUNG: After we have expressed our views, would it not be possible that the Legislature could not segregate them. We are not forming a bill to accomplish a purpose. We are making suggestions.

MR. LAWLER: I think you might proceed to point out, and what Mr. Gates has said makes it clear, that these two things should be wrought out if it is possible. The Legislature might see the utility of proposing a constitutional amendment, in fact, it would have to come from that source, and Mr. Adams' suggestion regarding constitutional amendment would carry that out.

MR. ADAMS: With the consent of the club, I will add the words "and for the purpose of accomplishing this end we favor the adoption of any necessary constitutional amendment" to paragraph 7, as proposed by me.

MR. JENNINGS: I think that the words "should the land owners so desire" should be stricken out.

This was done by general consent.

MR. CUSHING: I came here this evening opposed to this section that has been proposed by Mr. Adams, and I have listened with a great deal of interest to see whether anything would be brought out to change my views. I am still opposed to this amendment. I think the entire section 7 should be eliminated for this reason. Mr. Adams starts out with the proposition that this discussion is in a large sense academic for two reasons: First, because the bonds may never be needed, and, second, because the land owners may never want them. There, it seems to me, are two good reasons for not adopting an additional amendment permitting the State to pledge its credit in support of private enterprise. I believe

an amendment of this kind would he simply opening the gate to other bond issues for other purposes, and a very dangerous thing for the State. Mr. Adams suggests that the Supreme Court shall test the validity of the bonds hefore they are issued. If that is possihle, why is it not possible for the reclamation district to issue honds for which it shall be responsihle and have that sustained hy the Supreme Court? We all concede that this is a private enterprise as far as the reclamation of these lands is concerned, at least in its direct effects. The purpose of reclaiming these lands is pre-eminently for the henefit of the land owners, and I believe it would be against the policy of this State to issue honds for such a purpose. It would not be necessary to do it, and I believe that for the reasons I have suggested it would be a great mistake to do it. As I understand it, this entire subject discussed hy the cluh is brought up as the result of the question of reclaiming the lands, and the cluh seems now to have simmered down to the proposition that the land owners should pay for that part of the work necessary for the reclamation of the lands, and that the State and Federal Governments should pay for straightening out the river. I think it would be a mistake to recommend a constitutional amendment for the issuance of bonds.

MR. GATES: Would it be constitutional for the State to make this improvement and have it made under a board of engineers, and if so, could assessments be levied upon that land in proportion to henefits, placed in terms of ten or fifteen years at so much annually, the State paying in the beginning for the whole cost?

MR. JENNINGS: I think that some of the gentlemen lose sight of the fact that the State has some obligation in this. The State took over the lands from the United States Government with the understanding that it should be reclaimed, and sold them at a nominal sum with the understanding that they should he reclaimed. The idea is that the State can control that land because the people it sold it to did not carry out their part of the obligation, and, as has been stated before, when this land is reclaimed it will have an increased value, and it could be put before the Legislature in such a way as to show that the State would be benefited.

MR. WALCOTT: What we want to discuss is a scheme of reclaiming the land. The question of river improvement is not material. We had the United States engineer hefore us two or three months ago, who assured us that as far as navigation was concerned the river was never as good as to-day. If there is any justification at all for spending money, it is for reclaiming these lands. That is what we started out to do. This million and a half that is suggested for the tax that was authorized in section 6 will he spent fairly for the henefit of the land owners along the river. The question of how this reclamation is to be paid for is a very material one, and I think that we are quite as capahle of passing upon that as of passing on the engineering prohlems of what should he done. It seems to me that the section on finance should be asked as to how is the best way to pay for this work.

THE CHAIR: The question is upon the adoption of paragraph 7 as modified and corrected.

At this point several memhers suggested that as the club had reversed the action of a previous meeting in one matter, and might do so upon the pending vote as to another, it would only be courteous to delay voting until some memhers not present who had held different views could be notified. The suggestion prevailed, and as the time of the cluh was pledged to other topics for some months to come, it was agreed to hold a special meeting of the cluh for the consideration of this suhject only on Wednesday evening, September 28th.

# Discussion at the Special Meeting, September 28th.

The Secretary read from the record the resolution appointing the special meeting and stating its object.

THE CHAIR (Vice-President Adams in the Chair): The record shows an agreement that the vote taken on Section 6 should be considered as not taken, and that the Club should adjourn with the understanding tbat Mr. Adams had given notice of a motion to reconsider the action of the August meeting in regard to Sections 6 and 7. In the absence of the President, Mr. Adams being unfortunately in the chair, is unable to proceed.

JUDGE LAWLER: For the purpose of meeting the situation, I move that we reconsider the action of the August meeting with regard to Sections 6 and 7.

Carried, with the understanding that the Club would also reconsider all the Sections heretofore agreed to for the purpose of giving them their final form.

THE CHAIR: For the information of the Club, I will state that it has been suggested that it would be better to so rearrange the sections as to more clearly distinguish between the work done to open up the main channels for carrying the flood waters and that done for the direct reclamation of land I have therefore made such rearrangement, the language, excepting Section 7, being identical with that heretofore formally or informally agreed to by the Club, with the introductory or connecting words made necessary by their new position. Perhaps the Secretary had better read this rearrangement.

The Secretary read as follows:

1. In order that the reclamation of the swamp and overflowed lands of the Sacramento and lower San Joaquin may be properly accomplished, and in order that the State may fulfill its obligation to reclaim these lands, the State should assume entire control of the reclamation, in formal and permanent co-operation, under such organization as may be deemed best, with the Federal Government, which has charge of the interests of navigation.

2. The organization should be absolutely and by the most drastic legislation removed from any and all forms of political influence.

3. The engineering work necessary to carry out the extensive reclamation works contemplated should be placed in control of a Board of Engineers of the highest standing in their profession, who, in conjunction with the Government engineers in charge of the navigable river part of the work, should have full control until the whole undertaking is complete. The compensation should be such as will attract men of known ability and experience in works of this character.

4. The existing reclamation districts should be continued in existence until one after another they cease to be necessary, when they can dissolve under existing laws.

5. The State should erect all the swamp lands on the Sacramento and lower San Joaquin into one assessment district. The assessments for reclamation purposes should be levied in proportion to the valuation of the lands in such drainage district, to be determined after this system of drainage and reclamation shall be completed.

6. The State should levy a tax, and aid from the United States be secured, with the understanding that the object in the expenditure of this fund should be the rectification and deepening of the channels of the rivers and such disposal of the material removed as shall involve no danger to the interests of navigation in navigable waters elsewhere.

7. For the purpose of making the burden on the reclaimed lands as easy as possible while fulfilling its obligation to reclaim, the State, should it seem necessary, should issue bonds as required for such part of the work of reclamation as cannot, in reason, be borne by annual taxation; the bonds to be issued without conditions in order to secure a low rate of interest, but under a law which shall require principal and interest to be paid from the proceeds of the assessments levied on the Reclamation District, and no bonds to be issued until the validity of the assessment shall have been sustained by the Supreme Court. The bonds to

run for such period as may be deemed best, provided that complete redemption be effected within forty years.

8. After the completion of the plan of reclamation the cost of maintenance from year to year should be assessed upon the lands of the Reclamation District in proportion to their value as established by a uniform system of assessment within the district.

THE CHAIR: The question is upon the adoption of Mr. Reed's motion at the August meeting, striking out paragraph 6 of the report of the Section of Commercial Interests, which motion we are now reconsidering.

MR. JENNINGS: I move that, passing that for the present, we take up all the Sections seriatim, in the order in which they have been arranged by the Chair.

Carried, and all subsequent actiou in relation to paragraphs 6 and 7 is to be understood as in the nature of amendments to or substitutes for Mr. Reed's motion at the August meeting, which was before the Club for reconsideration.

THE CHAIR: The question is upon the adoption of paragraph 1.

JUDGE LAWLER: I think we should make an effort for the improvement of the rivers rather than for the reclamation of the lands. I know that it is strongly maintained that reclamation and river improvement must be treated together, but in view of our previous experience in this State, I dread any proposal that has a possibility of renewing the contest between the farmers and the miners. So long as we deal only with the question of the improvement of navigation we shall excite no antagonisms. When we begin to talk about the reclamation of the lands as a direct object of State effort we take great chances of renewing old controversies.

MR. JENNINGS: We have now a Commission of Engineers employed by the State which is, as a matter of fact, considering both river improvement and reclamation of lands. This Commission will submit a report covering both subjects, which are, in fact, unquestionably inseparable. I think the Club should consider what the Commission and the people are considering. I see no reasou to expect antagonism from the mining interests. Representatives of the miners have met with the Commission of Engineers and there seems to be entire harmony.

MR. WHEELAN: While I have great respect for Judge Lawler and believe that his opinion should carry great weight, I think tnat this Club should be guided in its action hy that which will be for the best interests of the State. Undoubtedly the improvement of the navigation of the river is for the best interests of the State. On the other hand, the question of reclaiming the lands is also of great moment, in the resulting profit in crops and in the increased productivity of the land and in the increased amount of taxes. I would feel this way about the action of the Commonwealth Club: If it antagonizes everybody outside of the Club and if the members feel that its action is exactly in accordance with the best interests of the State of California, and that it was in line with justice and right, it seems to me that is what must guide our action, and not how it is going to affect any one portion of the community or the whole community. We should act as nearly as possible to what is right and fair, irrespective as to whether it bears on the miners or on the agriculturists. I think we are right in combining the two propositions.

MR. REED: The question of the navigahility of the Sacramento and San Joaquin is a matter wholly in the jurisdiction of the United States Government over which we have no control. It is the duty of the Government to provide for the navigability of these rivers and you have had here as a guest of the Club the United States Engineer, who stated that never was this navigability better than at present. There is only one issue, and that is for the reclamation of one million acres of lands that have been threatened with floods, and that is what brought about the River Convention.

MR. WHEELAN: If in working out this reclamation system we at the same time should benefit the interests of navigation, surely the Club would not hesitate to recommend hoth going together. You do not want to reclaim on the one side aud interfere with navigation on the other.

MR. REED: You could not do so. My point is that we can have nothing to do with anything which the State cannot control, and when there is any improvement of the navigation we have no right to interfere with it.

JUDGE LAWLER: Even if the Government exercised complete control over the river there is nothing in the situation why the State should not seek to influence the action of the Federal Government regarding the improvement of the rivers.

Paragraphs 1, 2, 3 and 4 were then adopted without change.

THE CHAIR: The question is upon the adoption of paragraph 5.

MR. JAMES DENMAN: Mr. Reed, I think, has stated the matter properly. It is true that the State of California has in times past expended money in digging out the Sacramento, from Sacramento to Red Bluff, but lately the Federal Government is in entire control over the navigable rivers. Now we propose to provide a regular tax. We do not ask the United States about it at all—about the propriety of it. We can recommend that the navigation in the river be improved, and I want to say in connection with this subject that I have laid on a hog's back two or three hours trying to get over it on the way to Sacramento, but now you do not have to do it, and can get to Sacramento without stop. We do not know whether the United States Government will allow us to do it. I presume it would allow us to spend our own money if we wanted to.

MR. REED: This section as now proposed will entirely do away with what I proposed that the State should pay for the work by the issuance of bonds; that that should be the sole means, and which was agreed to by the Club. I do not want to vote against the adoption of this section, because the pressure of other matters compels the Club to leave the subject, and insistance would prolong the discussion of the subject. I do not think you can get a tax levy in California because you have not now enough money to pay present expenses. I merely think as a practical method it is right that the land should bear the tax largely; that the State should issue bonds upon the land through a constitutional amendment, and it would require less agitation than it would be to have the Legislature vote a tax.

MR. WHEELAN: The United States Government is under obligation to make the river navigable as far as the needs of navigation demand, but it might be very true that the river is in a condition to meet the demands of navigation, but is not in a position to meet the demands of reclamation, and it seems to me that the proposed expenditure by the State would install it as a part of the reclamation scheme and be charged to reclamation rather than to navigation, and that the lands benefited should bear that portion of the expense; and as far as this clause goes, money for that purpose should be raised by bonds, and while it should be expended in improving the river channels, it is not in the interests of navigation, but in the interests of reclamation.

Section 5 was then adopted, Mr. James Denman desiring to be recorded as voting no.

THE CHAIR: The question is upon the adoption of paragraph 6.

MR. JAMES DENMAN: We are proposing to erect this land into one district, and I suppose it will all have to pay an equal assessment. The owners have already spent millions of dollars. It is reclaimed. Here is a man who paid one dollar an acre for that land and he never spent another cent on it. You are going to make the man who spent millions of dollars spend just as much as he, and make his land worth hundreds of dollars. I know parties who have planned their work, protected their lands for years. Their land is reclaimed. You are going to put that into a district. The man who has reclaimed his land is charged at the rate of $200 per acre, for which he has spent considerable money, and the man who has paid $1 an acre is only charged taxes on that amount.

THE CHAIR: I would suggest to Mr. Denman that the Club seems to be only suggesting general lines of legislation, assuming that the Legislature in enacting any law would settle such details in accordance with justice. I make this suggestion because in the original plan with which this discussion began there was an express provision for guarding against the injustice to which Mr. Denman refers, but it has disappeared, apparently being regarded as going too much into detail.

MR. REED: I speak as one who has been interested in land that has been reclaimed. We have spent on that 160 acres not less than $50, $60 or $70 per acre in reclaiming it. Like every other acre of land in the Sacramento Valley, it is not reclaimed. You could not insure any of it at two chances out of four that it would not be flooded next year. There is not an acre that is safe. The owners of lands

on which considerable money has been spent are the ones anxious to have this land reclaimed. Mr. Van Loben Sels has spent large sums of money on the lower river and he says that there is no such thing as reclamation without a general system to carry away the flood waters. It is the owners who have spent millions in protecting themselves against these floods who are the most anxious to have a complete system of reclamation.

MR. WHEELAN: No matter what system of reclamation you figure out, it should be expressed in such a way as to show that these lands are to be taxed at the end of a system of reclamation. A doubt in the minds of many people would exist as to when the full system is going to be completed.

MR. REED: I think when the lands themselves were reclaimed. Not the last acre, because there are lands that never will be reclaimed.

MR. WHEELAN: I still object to the idea of valuation "after the system of reclamation and drainage shall be completed." It is evident to my mind that it is impossible for mortal man to predict what any great system is going to be in ten or five years hence. There is no doubt but what the system will be changed. It may be that the system of drainage and reclamation as mapped out may never be completed. You would have endless litigation as to when the system is complete. There is but one way to tax through benefit, and that is when the benefit is received. When that benefit is added to the land, let the land begin to pay its just share for its reclamation. Let us suppose some of your land was redeemed within one year under the reclamation system so imposed and that other land was not redeemed until ten years after. Is it possible that this land redeemed in one year's time is to have ten years of the increased productiveness and pay nothing for it? And is the last land to pay as much as that reclaimed ten years before? I do not think this just, and therefore for two reasons I should be opposed to it. First, there would be endless litigation as to when your system was completed, and second, that it would be unfair and inequitable.

JUDGE LAWLER: Every year the land is assessed in the spring. The Assessor would go to levy his assessments upon the land and that would be his estimate, and that would be a uniform system, and no man could be heard to complain of it. It should be determined according to the law of taxation in the State of California.

MR. REED: I think we are a little hasty in not thinking that Mr. Wheelan's suggestion is not open to criticism. While it is entirely just in one way, Mr. Wheelan argued against it when he said that when you start in when the land is valued at $200 and other at $1, you carry on the work on the land worth $1 per acre at the expense of the land worth $200 per acre. Here is a piece of land worth $100 in two years that was formerly paying taxes on $1 per acre.

MR. WHEELAN: I think you should go to work and adopt some uniform system. There never was a general law yet passed that did not work some severe hardships on some people. We have to adopt a uniform law and uniform system of taxation, and when this system of reclamation is put into operation the engineers may say it takes ten years to accomplish it, and if you say in ten years all the lands to be reclaimed are to pay the interest on the bonds and at the end of ten years they are to pay one-fortieth of the cost of the bonds, this would come as near justice as you could get.

PROFESSOR WING: Suppose we have a piece of land that is valued at $50 per acre and for some reason that is laid out as a town. Immediately the assessment of that land is advanced according to the prospective value. Just as soon as the reclamation scheme is begun all the land will be like the land laid out in city lots, and the Assessor will place an increased assessment on it the minute the reclamation scheme is commenced. All land under the scheme would greatly increase in assessment as it would improve.

MR. REED: Suppose everything was done and the dredgers were at work. Here is land in the Sacramento Valley worth $200 per acre and taxed at $75. Here is land on the basin worth $7.50 per acre. In five years it will be worth $100 per acre. How can you tax it the first five years?

JUDGE LAWLER: I move to strike out the concluding words of paragraph 6, after the word "determined," and insert so that the paragraph shall read as follows:

The State should erect all the swamp and lands on the Sacramento and lower San Joaquin rivers into one assessment district for reclamation purposes. The assessments should be levied in proportion to the valuation of the lands in such drainage district, to be determined under the general laws of taxation of the State of California.

MR. REED: The Supreme Court in passing upon reclamation districts always refers to similar irrigation districts. There is a general system in this State with respect to the assessment of land for irrigation and for reclamation. It is not by the Assessors of the county. It is by the Board of Trustees. The only practical system is a fixing of assessment for reclamation by the Trustees in charge of the work, according to the values of the land and the values it receives.

Judge Lawler's amendment carried and the paragraph as amended was adopted.

Mr. James Denman recorded as voting no.

THE CHAIR: The question is upon the adoption of paragraph 7.

MR. REED: It would seem from the paragraph as read that it is proposed that the burden of taxation for the payment of these bonds should be borne by all the property of the State.

THE CHAIR: That certainly is not the intended meaning. Nobody in the Club has ever proposed such a thing.

MR. JAMES DENMAN: The paragraph provides that we shall issue bonds. They are State bonds and the State shall pay that interest. Mr. Reed very properly says, how are you going to have that refunded again. The State pays it until the reclamation is completed.

THE CHAIR: Is there any objection to inserting the words "on the lands in the reclamation district" after the words "annual taxation"?

The words were inserted by unanimous consent.

JUDGE LAWLER: We express ourselves in favor of virtually lending the credit of the State to the reclamation district, when that is forbidden by the constitution. If we desire to accomplish the purpose of the paragraph we should favor a constitutional amendment.

THE CHAIR: Possibly Judge Lawler has not had occasion to examine the language of the constitution respecting that matter. The constitution says that the Legislature shall not pledge the credit of the State, but does not say that the people themselves shall not do so. It says nothing about that. Article XVI of the constitution would seem to allow the people to authorize the issuance of bonds for any clearly expressed purpose whatever, unless the Legislature is debarred from submitting a complete law for that purpose to the people, because as passed, and until ratified by the people, it would be unconstitutional. It is, of course, a question for the lawyers. We might add -- at we favor a constitutional amendment if necessary.

MR. WHEELAN: The State has a perfect right to issue bonds in as much as the obligation rests in it to reclaim these lands and the bonds are payable by the reclamation districts themselves.

MR. REED: The proposition to issue State instead of district bonds is in order to assure their ready sale at low rates of interest.

MR. SPRAGUE: If these bonds were issued by the State they would be State bonds and they would sell. The State would undertake to recover on these bonds from the reclamation districts. It would not matter to the bond holders whether the reclaimed districts paid or not. It strikes me this is the way to issue these bonds.

THE CHAIR: The Chair is informed, and I think it has been stated in the Club by a guest who is a large owner of swamp lands, that the owners who have been spending money for reclamation will oppose any bond issue whatever, for the reason that they desire to subdivide and sell the lands when reclaimed, and do not wish them covered with an irremovable bond lien. They prefer to borrow on mortgage, if necessary, at a higher rate of interest, so that when they sell they can clear up the titles, which will be more satisfactory to many purchasers. But the Club seems to wish to express its willingness that the State should aid in that way if desired, and if the real burden shall rest on the district and not the State.

MR. REED: We speak of issuing bonds for such sums as cannot, in reason, be borne by "annual taxation" of the lands within the district. Who is to determine the amount of annual taxation?

THE CHAIR: The Chair understands that it would be the Trustees of the District, or at any rate, the authority which determines such matters in other reclamation districts. I do not know whether the Legislature could pass a special law for this single district or not.

JUDGE LAWLER: I will offer an amendment something in this manner: That we favor a constitutional amendment if necessary, which will enable the State to issue bonds for the requisite cost of such reclamation, such bonds to constitute a lien upon the lands in the said reclamation district, the principal and interest of the said bonds to be paid out of the proceeds of a special tax for this purpose levied upon the lands in said district in accordance with Section 6 hereof

Carried, and the paragraph as amended was adopted, James Denman voting no and Mr. Adams desiring to be recorded in the same way.

THE CHAIR: The question is upon the adoption of paragraph 8.

JUDGE LAWLER: I think the language of this paragraph should be modified to conform to that of paragraphs 6 and 7, which we have just adopted.

Upon motion of Judge Lawler, paragraph 8 was amended so as to read as follows:

8 After the completion of the plan of reclamation, the cost of maintenance from year to year should be assessed upon the lands of the reclamation district in proportion to their value as provided in Section 6 hereof.

And in that form it was adopted.

Upon motion the eight paragraphs or sections as amended were adopted as expressing the sense of the Club on this subject. They are, in full, as follows:

## I. ORGANIZATION.

1. In order that the reclamation of the swamp and overflowed lands of the Sacramento and lower San Joaquin rivers may be properly accomplished, and in order that the State may fulfill its obligation to reclaim these lands, the State should assume entire control of the reclamation, in formal and permanent cooperation, under such organization as may be deemed best, with the Federal Government, which has charge of the interests of navigation.

2 The organization should be absolutely and by the most drastic legislation removed from any and all forms of political influence.

3. The engineering work necessary to carry out the extensive reclamation works contemplated should be placed in control of a Board of Engineers of the highest standing in their profession, who, in conjunction with the Government Engineers in charge of the navigable river part of the work, should have full control until the whole undertaking is complete. The compensation should be such as would attract men of known ability and experience in works of this character.

4. The existing reclamation districts should be continued in existence until one after another they cease to be necessary when they could dissolve under existing laws.

## II. THE MAIN DRAINAGE CHANNELS.

5. For the purpose of providing the Main Channels, into which the flood waters may be drained, the State should levy a tax, and aid from the United States should be secured, with the understanding that the object in the expenditure of this fund shall be the rectification and deepening of the channels of the rivers and such disposal of the material removed as shall involve no danger to the interests of navigation in navigable waters elsewhere.

## III. THE RECLAMATION AND PROTECTION OF LAND.

6. The State should erect all the swamp and overflowed lands on the Sacramento and lower San Joaquin rivers into one assessment district for reclamation purposes. The assessments should be levied in proportion to the valuation of the

lands in such drainage district, to be determined under the general laws of taxation of the State of California.

7. That we favor a constitutional amendment, if necessary, which will enable the State to issue bonds for the necessary cost of such reclamation; such bonds to constitute a lien upon the lands in such reclamation work, the principal and interest of said bonds to be paid out of the proceeds of a special tax for this purpose, levied upon the lands in said district, in accordance with Section 6 hereof.

8. After the completion of the plan of reclamation, the cost of maintenance from year to year should be assessed upon the lands of the reclamation district in proportion to their value, as provided in Section 6 hereof.

MR. JENNINGS: I move that when this discussion and conclusions shall be printed, a copy thereof be officially sent by the Secretary to the River Improvement and Drainage Association of California as expressing the sentiments of this Club.

Adopted. Whereupon the Club adjourned.

# DIRECT LEGISLATION FOR STATE PURPOSES

TRANSACTIONS OF THE

## COMMONWEALTH CLUB OF CALIFORNIA

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## The Referendum in State Legislation

Paper read by President H. Weinstock at the meeting of the Club held December 14, 1904.

Some time ago I was called upon by a citizen who invited me to sign a petition to the Legislature praying that a Constitutional Amendment be submitted to the voters at the next general election, providing for Direct Legislation, or as it is often called, "The Initiative and the Referendum." It suddenly dawned on me that "Direct Legislation" is a question upon which I had no convictions, and upon which I could pass no intelligent opinion. Pending some thought and further

inquiry into the matter I was obliged to beg off, for the time being, adding my signature to the petition. What follows is the result of such inquiry and presents the question in the order in which I followed it.

On reasoning out the matter in my own mind, my first impression concerning Direct Legislation was rather an unfavorable one. It did not seem to me plain how the political evils that are continually complained of could be modified, simply by giving the voters the privilege of passing upon laws and ordinances. I could not quite see how this would insure the election of better men; nor how it would in any way cripple the power and the influence of the political Boss; nor how it would prevent political corruption; nor how it would better insure the enforcement and execution of law; nor how it would arouse any higher degree of interest in municipal and other political affairs on the part of the more decent citizenship. It seemed to me that Direct Legislation would prove cumbersome, costly, slow, and inefficient, and would be more or less a bar to progress. Nor could I forget that in a recent general election in our State at which several proposed Constitutional Amendments were submitted to the people, only a fraction of the citizens who went to the polls voted on the proposed Amendments; many showing either an indifference to or an ignorance of the questions submitted, by failing to pass upon the measures. Nor did I forget the heavy editorial leaders that appeared in some of the great metropolitan journals immediately after the general election, pointing in strong words to the lesson to be gained from the light vote cast on the Constitutional Amendments; and deducing from this fact the conclusion that Direct Legislation cannot be looked forward to as a panacea for our political ills. I recalled the language used by one metropolitan editor who said that, "The electors of San Francisco have demonstrated the ridiculous tom-foolery of the proposition of Direct Legislation by absolutely refusing to legislate for themselves when the opportunity was given." He called attention to the fact, that but one-fifth of the vote cast on the preceding election had registered for, or against, certain proposed amendments and that four-fifths of the voters had ignored the whole thing, and he concluded therefrom that the people object to being tormented with continual calls to decide general questions; that the people can be tremendously interested in men, but that it is rarely, indeed, that they will concern themselves about measures. "The traditions and desires of the American people," he went on to say, "are for representative government," and but a very small minority can be induced to engage in "Direct Legislation." Another editor commenting on the results of the same election went on to say tbat, "Since a combination of so many and so varied amendments proposed at one election failed to bring to tbe polls more tban one voter out of five, it is clear that the mass of our people are averse to mixing politics with their private business," and yet, it remained to be pointed out that every amendment that was considered meritorious was carried. One amendment submitted was generally denounced as vicious, and this amendment was voted on by one-half of all the citizens who went to the polls and was overwhelmingly defeated.

I am free to confess tbat to me there seemed much force in the facts pointed out in the editorials from which I have quoted, and the thougbts expressed by tbe editors simply emphasized the objections against Direct Legislation that had arisen in my own mind. The fact remained, however, that a proposed amendment that had received the approval of the Legislature, but was condemned by the press generally and looked upon as vicious by all who gave it careful consideration was overwhelmingly defeated.

If nothing more had been accomplished by this one use of the Referendum than to defeat a vicious proposed law tbat might have proven most costly and harmful in its results, it had rendered a valuable service, and thus, it seemed to me that the question of Direct Legislation was worthy of further study.

On inquiry I found that an abundant literature on the subject was available, and a careful reading of some of this literature prepared by minds that had given the question much thought, finally satisfied me that reasonable objections to the Referendum can be overcome, that the drawbacks to Direct Legislation are inconsequential, and that the advantages are greatly in the ascendancy, and I became a convert to the doctrine. I found that the objections which had arisen in my own mind, and in the minds of others, might be summed up and answered as follows:

To make and to pass upon laws, demands careful study and an intimate knowledge of the proposed question. The mass of the people have neither the time, nor the inclination, nor the ability to give such proposed laws the consideration to which they are entitled.

I found, however, that if this be true, it condemns our whole system of government. The foundation upon which our commonwealths rest are the State Constitutions. These are voted upon directly by the people, and no amendment or modification of such constitution can be made without being referred to and acted upon by the people. If the people have neither the time, nor the inclination, nor the ability to say what law shall govern them, how idiotic to let them pass upon the very foundation of all State law; viz.: its Constitution. Why submit a document so grave and serious in its possible consequences to the people; why not give our constitutional conventions the power to prepare and to adopt such a constitution as in their judgment is fit?

I do not think that the most ardent advocate of representative government, nor the greatest skeptic as to the fitness of the people to pass upon laws and ordinances would be prepared to advocate such a measure. The same danger that lies in giving a constitutional convention supreme power in creating for the people a constitution, holds good in giving legislative bodies supreme power in making laws and ordinances. The difference is not of kind, but of degree. Our government was meant to be a democracy—a democracy means a government by the people, a government by the many, for the many.

It has seemed expedient to gradually let the few govern and the many obey. This has brought about two sharply defined classes, the rulers and the ruled. It matters little what names are used to designate these classes. It matters little whether the rulers are called Patricians, Aristocrats, Nobles, or Legislators or whether those ruled are called Plebians, Subjects or Citizens, the results are substantially the same. The Legislator who is given full power with no redress on the part of the people except to turn him out at the end of his term, is just as likely to exercise his power despotically for his own selfish good, as the most ancient Patrician, Noble, or Aristocrat. Nor is the fear of defeat for re-election likely to deter him from improper use of his power, when he knows that the memory of the people is often short-lived, and when he looks about and sees men who are notoriously corrupt, being re-elected time and again to public offices which they dishonor and disgrace. When the citizen, under the representative system, casts his ballot for his alderman or his legislative representative, he completely gives up his birthright and leaves himself no opportunity to veto or to restrain his so-called agent from ignorant or vicious acts, likely to injure and to damage the citizen's interest. We should deem such a policy in private affairs most reckless. The man of affairs who should place his interests in the hands of an agent who had been nominated by parties in whose character he had no confidence, and who would give such an agent full power to act in his behalf without such agent being obliged to submit his acts for approval, would simply be inviting failure, and in the eyes of most people would be looked upon as one sadly in need of a guardian. This is precisely what we do at every election. We vote for men notoriously unfit, whom we know to be the tools of corrupt, political ma-

chines; men, whom we would not dream of trusting or employing in our private affairs, and yet we give them full power to act, without reference to our interests or wishes. A strong illustration of this is given by an advocate of Direct Legislation, who in speaking of the conditions existing in Philadelphia, cites the following well-known case: "Recently the Philadelphia Councils, bribed by the rich to rob the poor, have given to private parties a lease of the city's gas works and franchises, against the indignant protest of the people. The question of raising a loan for various public improvements was submitted to the people, but Councils refused to take a referendum on the gas lease. A test vote taken by the "Inquirer" (one of the leading Philadelphia papers) in an average ward just before the lease was made, resulted in 32 ballots for and 2,583 against it—80 to 1 against the action of the Councils. Councils were flooded with petitions, mass meetings were held and the press was practically a unit against the lease. But the legislators were acting as servants of the corporations and not as agents of the people, though drawing salaries as such, and they gave away the people's property to their co-conspirators, in spite of all the people could do. The people must wait until the next election even to turn out the rascals, and even that would not bring back the property, for such franchise grants become valid contracts enforceable in the Courts as soon as the stock and bonds are sold to innocent parties."

"If Philadelphia had had the Referendum, however, the lease would have been stopped—instead of holding useless mass-meetings and sending in impotent petitions, they would have sent in a mandatory petition for a referendum vote on the lease and snowed it under at the polls."

"Legislators and Councilmen are willing now to submit measures in respect to which they are acting honestly, but they do not submit "gas grabs and franchise steals."

The second objection raised to the Referendum is the time it would demand on the part of the voters and the excessive cost of numerous elections. Experience where the Referendum is largely in use (in Switzerland for example) has shown that neither objection will hold. The Referendum does not mean that every measure must be submitted to the people before it becomes a law; it means that things will go on precisely as they do now, with this difference that, if a municipal or State Legislative body shall enact a law which seems ill-advised or harmful, a petition signed by, say five per cent of the voters and filed with the proper authority shall make it mandatory to submit such measure to a vote of the people; unless such measure is one demanding speedy action, it can be submitted and usually is submitted at the next general election, thus involving little or no extra loss of time on the part of the voter and little or no extra cost.

Not least among the benefits of the Referendum lies in its restraining influence on the part of corrupting corporations and corruptible law-makers. Who would be foolish enough to pay bribes for a franchise with almost a certainty that the granting of such franchise would meet with defeat at the polls? Men, however corrupt, do not generally pay for goods unless there is a strong probability of their delivery; and while rich conspirators can well afford to pay some thousands of dollars to some men, to obtain some exclusive privilege, they cannot afford to pay thousands each to the majority of voters of any community and still see for themselves a profit in the deal.

The third objection raised is that, the Referendum is a reflection on our alderman and legislators. It is surely not a greater reflection on them than is the submission of a State Constitution to the vote of the people a reflection on the members of a constitutional convention. For dignity, high character, and ability, the personnel of a constitutional convention will surely compare favorably with that of an average board of City Trustees or Board of County Supervisors, or

members of a State Legislature. The members of a constitutional convention do not regard it as a reflection on their character or ability when their work is submitted for approval to the people. They fully realize that their function is that of a guide and advisor, and not that of dictator. Untrammeled power leads to tyranny, despotism and corruption. Unrestrained power tends to bring out the worst rather than the best in most men. This in turn brings the positions they may occupy into disrepute, and tends to keep the high-minded and the decent-minded from seeking or accepting such positions. Is this not largely the history of American office-holding? The unchecked power given our officials and law-makers has led to its abuse, this abuse has led to political life becoming largely discredited, many men who value their reputations shun it, and thus aggravate the conditions by forcing politics into the worst hands. The remedy for higher and cleaner political life lies in purifying politics. This can be done only by lessening the possibility for mischief on the part of the vicious or the unscrupulous who enter politics. To lessen this possibility means that the people must retain in their own hands the power to prevent vicious or corrupt legislation from being put into force.

The Referendum gives such power to the people. Under the system of Direct Legislation representatives and Legislators would still remain "Emergency rulers and universal advisors," but the real power would remain with the people.

The fourth objection raised is that "Direct Legislation" cannot overcome the defects in our political system connected with partisanship; that it cannot prevent political bosses from parceling out soft places to political workers, nor extravagance in the expenditure of the people's money in the conduct of public affairs. All this is true, but Direct Legislation can prevent vicious or corrupt, or unwise legislation; and when this is accomplished a great stride has been made in the direction of good government.

While it can be pointed out that good measures submitted to the people are often voted down, the first instance is yet to be cited where a bad or vicious measure has been carried by a vote of the people. The people, as a whole, want good government. They will not knowingly and intentionally vote for bad government, as is often the case with corrupt or selfish legislators.

The Conservative needs the spur and the Radical needs the rein. If we were as ultra-conservative as the Chinese and clung to our laws as they do, simply because of their age and the traditions by which they are surrounded, it might be held with some force that we should encourage more legislation rather than a higher degree of Conservatism. But in the face of the fact that this people stands out as the more progressive in the world's history, we need a check against hasty legislation.

The tendency of the people at the polls, however, is generally conservative, and this tendency should receive the encouragement that Direct Legislation brings with it. One of the greatest ills to which the American people have been subjected is that of hasty legislation. No wiser or more effective measure can be enacted to check this ill than that of Direct Legislation.

The fifth objection raised against the Referendum is that it is foreign and un-American; that this is a representative and not a democratic form of government, and that while Direct Legislation may have been eminently successful in such countries as Switzerland, it cannot succeed in this country, where the conditions are so widely different. Our government has truly become representative more than democratic in character. But this is largely the result of seeming necessity rather than choice; and because the practicability and the advisability of the law of direct legislation is of comparative recent origin. The New England system of town meetings is thoroughly democratic, and is acknowledged as the best, wisest and most economic form of government. It has been perpetuated

wherever a limited population permits of its practice. That it has not spread to large communities is due to the fact that the method is not practicable in unwieldy and largely populated centers, where the best expedient seems to be the representative system. That many of our foremost statesmen and thinkers believed in democracy, pure and simple, has often been exemplified by their utterances. John Quincy Adams said that "The will of the people is the end of all legitimate government on earth."

Thomas Jefferson said that, "Governments are republican only in proportion as they embody the will of the people and execute it."

Lincoln dwelt with emphasis upon "Government of the people, for the people and by the people."

Speaking of democracy Professor John Fiske says that "Government by town meeting is the form of government most effectively under watch and control. Everything is done in the full daylight of publicity. The town meeting is the best political training school in existence."

Professor Bryce says, "The town meeting has been the most perfect school of self-government * * * It has not only been the source, but the school of democracy."

Direct Legislation carries with it the spirit of the town meeting, and in common with the town meeting affords the people an opportunity of direct expression on matters of legislation, and makes democracy possible on the largest scale.

Thus, while we have drifted through ignorance of the law of Direct Legislation, and by force of circumstances into a representative form of government; and to that degree have become undemocratic, the spirit of the American people still remains democratic. To win them over to the measure, it seems but necessary to show them that by means of Direct Legislation, democracy on the largest scale is possible and practicable. The fact that Direct Legislation carried out as it is to the fullest and highest degree in Switzerland, for example—is thus largely a foreign measure—is surely nothing against it.

When the hour will be at hand, when we shall say that we will abide by no wisdom but our own; and that we shall decline to profit by the experience of others; then will our march of progress have come to a halt, and the history of our advance in civilization be brought to a close. The wise nation—in common with the wise man—seeks wisdom wherever it may be found, and stands ready to sit at the feet even of a child if it has something to teach. A wise people do not permit a false sense of pride, or an undue spirit of egotism to lead them to believe that they have a monopoly of the world's wisdom or experience. As the giant can frequently gain wisdom from the dwarf, so can the greatest among the peoples frequently gain much wisdom from the smallest among the nations. This nation has done much political and legislative pioneering which other nations have not been slow to profit by; and hence, in turn, it is our right and privilege to profit by the political and legislative pioneering of other nations, even though it be Switzerland, one of the smallest of the world's Governments.

The sixth objection raised against Direct Legislation is, that it is likely to interfere with capital and its rights and privileges; and to that degree repress material growth and progress.

There is no denying the fact that unjust or corrupt capital has much to fear from Direct Legislation, which, as a rule, would circumvent its selfish, unholy and dishonest schemes. This in itself, however, is the strongest argument to be offered in favor of Direct Legislation. All other political means have thus far proved futile to checkmate the greed of unholy capital. No greater blessing can befall the nation than the adoption of a political method which shall circumvent

the cunning and trickery of those seeking to rob the people for selfish ends. Just and fair-minded capital has, however, little or nothing to fear from Direct Legislation. The people are not only conservative but fair-minded as well.

There are some among us who, with Carlyle, believe that the people are mostly fools, and with him feel prompted to say, "O, my superiors! My heroes! Come down and rule me as thou seest best! Compel me to do thy sovereign will." Fortunately, such as these are few among us; or we should soon see arise in our midst a Caesar or a Napoleon.

The people, being human, are liable to err, but are continually gaining in enlightenment, and their hearts are growing in the direction of righteousness. Whatever mistakes in judgment they may make, they are ever ready to speedily correct. Capital that seeks only an honest profit and a fair return has nothing to fear from the fullest possible legislative power being placed in the hands of the people. Quite the contrary, such capital has much more to fear from undue power being placed in the hands of corrupt and blackmailing legislators, who do not hesitate to threaten to enact all sorts of hostile measures, and to pass "cinch bills" in the hope of being bought off by invested capital.

Capital, in common with labor, is deeply interested in good government. Its value and the value of its investments depends largely upon the stability of the government. No government that lacks stability can be secure. Let the foundations of government become weakened and its future made uncertain and precarious, and capital which, at best, is timid, if not cowardly, immediately becomes alarmed and either goes into hiding or demands an exorbitant profit to compensate it for undue risk. Direct Legislation takes power from the few, where it is always dangerous to let it remain, and gives it into the hands of the many; thus placing government like the pyramid, on its base, instead of on its apex, and thus giving it the broadest possible foundation on which to rest. The broader the foundation, the safer the government; the safer the government the more secure is capital and its investments. The honest capitalist who carefully studies Direct Legislation, its influence and its possibilities, is therefore likely to become its ardent supporter and advocate, and to feel that he is rendering a public service when he enlists in its cause.

The seventh and last objection raised against Direct Legislation is, that owing to the indolence or the indifference of voters, only the few will cast their ballots on questions to be passed upon at the polls, and hence, Direct Legislation will after all not give the voice of the people.

Recent experiences in our own State and City have shown that when measures are submitted that are not regarded as vicious or harmful, only a percentage of the voters can be induced to go to the polls. This simply means that the unfit and the indifferent automatically disenfranchise themselves. The loss in such a case is largely their own. As a rule, the unfit will go to the polls only when they are paid for so doing. If they remain away good government is the gainer thereby. The indifferent, as a rule, are indifferent only so long as they believe their interests are not affected. Let a vicious measure be submitted likely to affect their rights, their property or their interests, and they speedily become interested parties and hasten to the polls. It is this fact that thus far has made it impossible for any bad or vicious measure to carry by a vote of the people. While it is sometimes a keen disappointment that through a failure on the part of many voters going to the polls good measures fail to carry, it is always a source of protection and satisfaction that vicious measures are sure to be defeated.

In conclusion it may be said, that if the people are not fit to vote upon measures directly affecting their interests, and for the study of which ample time may be allowed under the law, how are they more fit to vote for men to legislate for them whose characters, especially in large communities, it is impossible to know

in advance of their election. If the people are unqualified to vote upon such secondary matters as may be brought before them under Direct Legislation, how are they qualified to vote upon the primary questions submitted—by Constitutional Conventions or Amendments to State Constitutions?

If this is to be a self-governing people, and if the citizen is to be the sovereign and not the subject, the greater the responsibility placed upon him, the more likely is he to be fitted for sovereignity. The danger of good government does not lie in giving power to the people, but in robbing them of their power and in placing it in the hands of the few. Free government is never safe in the hands of the few, whose interests are likely to prompt them to exploit the many for their own selfish ends. The few are more likely to be safe in the hands of the many, especially if the desire and tendency of the average among the many are to seek the right and to do the right.

That these are the desires and the tendencies of the average American citizen will, I believe, not be disputed. To say that they are not so inclined is to indict our whole people, to condemn them as being unfit for self-government, and to pronounce as a failure the remarkable object lesson of self-government the American nation presents to the world.

What can the Commonwealth Club do toward securing Direct Legislation? It can do its fullest share in bringing about this important change in our organic State law. At the last session of the Legislature a bill was presented providing for the necessary amendment to the Constitution. This bill passed the Assembly, but was defeated in the Senate.

It is the intention of the Direct Legislation State League to re-submit the measure to the Legislature, soon to convene, meanwhile, the Commonwealth Club, through its bulletins, the press, and its membership, can do much to educate legislators and the public on this important issue and to lend its influence in aiding to have the measure passed by our legislative bodies and adopted by the people.

THE CHAIR. The paper will be referred to the Section on Public Laws.

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## Discussion at January Meeting.

The Chair—We will now have the report of the Section of Public Laws on the paper on Direct Legislation.

Mr. Adams: It has not been found possible to assemble a group of members, on short notice, who could devote the time necessary to think the subject out and reach conclusions on the merits of the subject for recommendation to the club for adoption. One or two attempts to find members who would undertake the analysis of the subject, and the compiling of accumulated human experience in Direct State Legislation, and assume responsibility for the draft of the report failed, owing to the shortness of the notice. Mr. John P. Young volunteered to make a study of Direct State legislation as it actually exists in California. The rest of the investigation has been done by the Chairman of the Section. All the members designated to discuss the subject at this meeting, with some others, were requested to attend a Section meeting to pass upon the report, but only Messrs. Young, Burk, Porter and the Chairman were able to respond on such short notice. They concur in whatever recommendations are made. There has been no time to redraft the report so as to incorporate that prepared by Mr. Young with the other matter. As will be observed there has been an effort to call attention to all objections to the proposed measure in order to bring out full discussion. The following is the report:

# Report of Section on Public Laws.

Your section on Public Laws to which was referred the address of President Weinstock, entitled "Direct Legislation," begs leave to report as follows: Mr. Weinstock having stated that be intended his paper to have reference only to Direct Legislation by the State, tbe Section has excluded the referendum for local purposes from consideration. That is an entirely different question.

The subject is of interest in the United States if for no other reason than that it presents a very curious phenomenon. While economic forces, and nearly all the great social forces, are making for centralization of authority for the purpose of securing efficiency, the Direct Legislation propaganda is a movement in precisely the opposite direction. Any thoughtful consideration of the subject must take into account the probabilities of conflicts between Direct Legislation by a subordinate authority and the enormous amount of existing Direct Legislation by superior authority, and the time required to remedy any resulting difficulty.

As the paper is a strictly a priori argument upon premises left to be inferred, the first duty of the Section is to determine the facts which seem to be assumed by the author as the basis of his argument, for as a rule intelligent discussion of an a priori argument must be directed to a study of the soundness of the premises. The fundamental assumptions seem to be as follows:

1. A constitutional amendment submitted to the people has received the approval of the Legislature.

This is open to question. It might be claimed that it does not signify approval at all, and that Legislatures submit many propositions for laws which they would not themselves enact.

2 The denial of the wisdom of Direct Legislation involves the denial of the wisdom of submitting a Constitution to the vote of the people.

This statement necessarily involves the other assertion that the people are as competent to act in their own interest upon one law as upon any other—that is to say that there is no more room for error in the popular judgment upon a brief Constitution confined to general principles like the Constitution of the United States and our earlier State Constitutions, than in an elaborate measure containing much detailed legislation like the present Constitution of California and many other States. It is possible to assert that the assumption in the paper includes two assumptions, one true and one untrue.

3. Our government was meant to be a Democracy.

Democracy is an overworked term but the context indicates that the author of the paper meant it to have its primary meaning of a government in which the people directly exercise their sovereign power as in the ancient Greek cities or the towns of New England. If the assertion is made as to State governments it would be quite possible to dispute this and conteud that it was the intent of the founders of the Republic that the State governments should be, as they were at tbe time, representative governments—the representatives being strictly limited by general provisions of the Constitutions. Ou May 10th, 1776, the Continental Congress advised the people of the Colonies to adopt such forms of government as sbould seem best "to the representatives of the people"—and this in opposition to John Adams who insisted that the people themselves should act. Only two of the first State Constitutions of the 13 colonies were submitted to tbe people, nor did that method become usual until well into the 19th century.

4. "We vote for men notoriously unfit whom we know to be the tools of corrupt political machines * * * and yet we give them full power to act."

It might be asserted, to the contrary of this, that we do not usually vote for men whom we know to be the tools of corrupt machines, but at the worst, for men whom we know little about, that as a matter of fact most of our legislators are

honest men, and that we do not give them full power to act, but strictly limit them by an elaborate Constitution.

5. The first instance has yet to be cited where a bad or vicious measure has been carried by vote of the people.

This might be a matter on which men would differ if there were available a complete list of the measures which have been carried by such votes. For example, Prof. John R. Commons mentions a quite recent federal referendum vote in Switzerland prohibiting the slaughter of cattle by bleeding, the sole object being the prosecution of the Jews, by preventing them from preparing meat in accordance with the requirements of their faith. There are doubtless some who would consider that very vicious legislation.

6. When but a small portion of the electorate votes on measures submitted to it, it is the "unfit" who voluntarily disfranchise themselves.

There are certainly those who will dispute this statement.

7. Legislators are as likely to exercise their power despotically, and without reference to the wishes or the welfare of their constituents as born autocrats.

This statement will be vigorously denied. It will be claimed by some, on the contrary, that legislators are supersensitive to public opinion in their own districts.

All the foregoing are condensations, intended to be accurate, of direct statements in the paper. The following, less directly stated, seem to be as certainly assumed:

8. The people can deal, directly, as wisely with subjects affecting large areas, and large populations with conflicting interests, as with the affairs of a small town with which they are all personally cognizant, if not quite so well, at least better than their chosen representatives will deal with them.

9. Direct federal legislation has been satisfactory to the people of Switzerland, and has resulted in good laws.

As to this Professor John R. Commons intimates that it is not satisfactory at all, and that Switzerland is advancing it for proportional representation which several countries have already adopted. (Proportional Representation, page 192.)

10. Whatever a homogeneous, native born population inhabiting an area of 15,976 square miles can do well can be done equally well by a heterogeneous, largely foreign born population inhabiting an area of 136,172 square miles.

The area of Switzerland is less than the combined areas of Madera, Fresno, and Kings Counties in the San Joaquin Valley, and 24.7 of the population of California is foreign born as to the United States, and a clear majority, doubtless, foreign born in respect to California.

As there can be no useful a priori discussion until there is a substantial agreement upon the premises, and as apparently none of the assumptions of fact in the paper are likely to be accepted as true by all who will participate in the discussion, and as the section cannot, in the limited time at its disposal, undertake to investigate, much less pass upon, the foregoing and other statements or evident assumptions of fact contained in the paper, and thereby reach and formulate conclusions to be recommended for adoption by the Club, we are constrained to report back the paper without recommendation. We may note, however, that we are unable to concede that proof of the wisdom of direct legislation in rural towns and small cities—or even in large ones—is proof that the people of California could legislate directly, in their own interests, on such subjects, for example, as the Sacramento Reclamation project, the control of the harbors of the State, the details of our irrigation law, the location of a University farm, the establishment of a State forestry system, the control of hydraulic mining and similar questions which are constantly arising. We do not say here that the people could not

wisely legislate directly on all these subjects but only that their ability to judge of their own interests in local affairs does not prove that they could do the same thing in State affairs, because they would have no such opportunity to inform themselves of the facts upon which any sound judgment must be based. We do not think that local experience is a safe guide for State action. For example we have now had the initiative and referendum in San Francisco for a number of years and the only proposition under the initiative thus far voted on was an ordinance submitted by petition for virtually making San Francisco a wide-open town. It might be that no such laws would be proposed in the State. We are not sure that we can concede that the people would be sure to legislate in their own interest even in local affairs. Some twelve or fifteen years ago there were organized in this State some thirty or forty irrigation districts, of which a large number, also by direct legislation, voted to issue bonds in large sums. As is well known all but one or two of these districts were disastrous failures involving very heavy loss to the people, and all because the people voted without any accurate knowledge of the facts. It has also to be considered that if by chance the people ever should make a mistake, the process of rectifying the error would be slow, costly and tedious. We do not present these things as conclusive objection to direct State legislation, but only as among the things necessary to be considered in discussing the subject.

The members of the section have sought to ascertain what the world's experience on this subject has been. The literature of the subject is voluminous, but mostly too biased to be trustworthy. The following are the facts, so far as we have been able to discover them:

The standard reference of the advocates of direct legislation is to its alleged satisfactory results in Switzerland. Switzerland is, as already stated, a small country whose area is substantially equal to the aggregate area of Madera, Fresno, and Kings Counties in this State. It is divided into 22 Cantons which, until within the last half century, were as independent of each other as the American Colonies before the revolution, and as a matter of fact were frequently at war with each other, although apparently, like quarrelsome husbands and wives, quite ready to join in fighting the intrusion of outsiders. We have previously spoken of the people as homogeneous, as they are in the sense they are in the main natives of the soil and the descendants of many generations who were the product of the same environment. In other respects, however, the Swiss are heterogeneous enough, some Cantons using the French language, some the German, and some the Italian. Some Cantons are Protestant, and some Catholic, and in the days when men cared enough about religion to fight about it, religion was one of the most common causes of inter-cantonal wars. There are mountain, foot hill and agricultural valley Cantons. A few of the Cantons had representative governments, in some cases virtually controlled by an aristocracy, but in most of them the legislature was strictly controlled by the referendum—optional or obligatory —substantially as now. A few Cantons were conducted as pure democracies, with no legislative authority except the assembly of the whole people, a form of government maintained by the four smallest Cantons to this day. In 1848 the 22 Cantons united to form what they call the Swiss Republic, which is a confederacy whose powers were strictly limited by a constitution. There is a federal Supreme Court, but its authority does not extend to declaring a law void because unconstitutional. The people had therefore, no protection from arbitrary federal legislation, and it was therefore quite natural when, in 1874, the federal constitution was revised, to add to it the principle of the referendum, to which the majority of the people had been from time immemorial accustomed in their cantonal governments. That the federal referendum was satisfactory to the Swiss must be assumed from the fact that in 1891 the initiative was added. At that time, or two years later, 20

laws had been submitted to the people under the provisions of the referendum of which 14 were adopted and 6 rejected. Very little use has been made of the federal initiative. We have been unable to find any later record of Direct Legislation in Switzerland, but it presumably proceeds about as it did before 1891. It is a method derived by the natural processes of political evolution, seems well adapted to the character and situation of the Swiss people, and if it were not satisfactory to the majority would doubtless be repealed. Prof. John P. Commons, however, states that in some Cantons it has already been virtually superseded by proportional representation. We do not find that it has been adopted in any other foreign country.

In regard to Direct Legislation in the United States, Dr. John R. Haynes, President of the Direct Legislation League of California, writes us as follows:

Three states in the union have the Initiative and Referendum incorporated in the constitutions, namely: South Dakota, Oregon and Utah. In South Dakota the provision has never been made use of for the simple reason that the necessity for this use has never occurred, but the governors of that state all testify that its silent influence has been most beneficial. In Utah it has never been made use of for the reason that the constitutional amendment does not make itself operative but needs an enabling act by the Legislature to make it effective, which enabling act the Legislature so far has failed to provide. In Oregon the constitutional amendment carried about three years ago by an overwhelming majority and at the session of the Legislature following the election an enabling act was passed by the Legislature putting the amendment into effect. At the last election in Oregon two laws were voted upon which were initiated by the people; one was providing for direct primaries in the state and the other for local option, both of which carried by good majorities. Thus while three states in the union have Direct Legislation in their constitutions, Oregon is the first one to make use of it. So far the Referendum has never been used in any state to my knowledge.

At the session of the California Legislature in 1903, two amendments were introduced (Assembly amendments Nos. 14 and 15) proposing to establish both initiative and referendum in State, cities and counties. Amendment No. 15 dealt with Direct Legislation for the State, which is the subject before the Club. This proposed amendment provided that whenever five per cent. of the electors voting at the most recent election for Governor should submit to the Legislature such a bill "as the Legislature itself might enact"—that is, presumably, a constitutional bill—the Legislature must either enact it unchanged or submit it to the vote of the people. It further provided that no law passed by the Legislature—except emergency measures passed by a two-thirds vote—should go into effect until 90 days after its passage, and upon petition of five per cent. of the electors it must either be repealed or submitted to the people at the next general election. If the petition was filed before the law went into effect and was signed by fifteen per cent of the electors the law should not take effect until ratified by the people. Laws passed by the people were not subject to the veto of the Governor, or repeal except by the people.

The following is the legislative history of the Initiative and Referendum Constitutional Amendments in the last Legislature (1903):

Assembly Const. Amend. No. 14. (Local).
- Introduced by Camp Jan. 20—referred to Com.
- Adopted Feb. 26 by vote of 65—1.
- Refused adoption in Senate Mar. 13, vote 13—14.

Assembly Const. Amend No. 15. (State.).
- Introduced by Camp Jan 20—referred to Com.
- Refused adoption Mar. 2, vote of 50—17.
- Reconsidered Mar. 3d. by vote of 65—4.
- Adopted Mar. 12th by vote of 56—6.

Senate Const. Amend. No. 9.
- Introduced by Hubbell Jan. 19—referred to Com.
- Refused adoption Feb. 10, by vote of 12—22.

Senate Const. Amend. No. 10.

Introduced by Hubbell Jan. 19—referred to Com.
Refused adoption Feb. 10, by vote of 12—19.

At the present session of the Legislature it is the intention of the league to again introduce both amendments—the first providing for the initiative and referendum in all cities, cities and counties, and counties in the State substantially as it exists in the city and county of San Francisco. The other amendment, referring to the State, differs from that introduced in 1903 by omitting the obligatory referendum, and providing for the initiative only. As the amendment will probably be before the Legislature when this report is discussed, we insert it in full, as follows:

SENATE CONSTITUTIONAL AMENDMENT NO.—

To propose to the people of the State of California an amendment to the Constitution of the State amending Section One of Article Four, providing for the enactment of certain laws by popular vote in State legislation.

The Legislature of the State of California at its regular session, commencing on the day of January, 1905, two-thirds of all the members elected to each of the two houses of said Legislature voting in favor thereof, hereby proposes that section one of article four of the Constitution of the State of California be amended so as to read as follows:

Art. 4, Section 1. The legislative power of this State shall be vested save as otherwise in this Constitution provided, in a Senate and Assembly, which shall be designated "The Legislature of the State of California," and the enacting clause of every law shall be "The State of California doth enact as follows:"

Any law that said Legislature itself or the electorate of the State, as herein provided, may enact, the Legislature may submit to a vote of the electors of the State at a general or special election.

Upon the presentation to the Legislature of a petition or petitions signed by qualified electors of the State in number equal to 10 per cent. of all the votes cast for persons voted for for Governor at the theu last election of Governor, asking for the submission to the electors of a law set forth in full in such petition or petitions, being a law that the Legislature itself may enact, it must either enact such law without amendment or submit the same to the electors at the next succeeding general election, occurring subsequent to eighty days after the presentation of the petition or petitions.

If such proposed law is a law that the Legislature itself may enact, except for the fact that it involves the repeal or amendment of a law adopted by the electorate as herein provided, and if in such case said petition or petitions are signed by qualified electors, in number equal to 15 per cent. of the total number of all the votes cast for persons voted for for Governor at the then last election of Governor, then such proposed law must be submitted to the electors as herein provided.

If a majority of the votes cast on any law or measure submitted as herein provided, to the electors of the State, shall be in favor thereof, said law or measure shall, if not already in effect, go into effect ten days after the official count shall be determined; otherwise such law or measure shall stand repealed or rejected; such repeal shall take effect ten days after the official count shall be determined.

No measure adopted or approved by vote of the electorate shall be subject to veto, or be amended or repealed except by vote of the electorate.

If the provisions of two or more measures approved or adopted at the same election conflict, then the measure receiving the highest affirmative vote shall control.

A petition presented to the Legislature shall be binding upon the incumbents in office and their successors, until due action is had thereon.

The method of signing and presenting petitions provided for herein shall be as follows:

After each signature shall be written the signer's place of residence. Each separate sheet of the petition shall have attached thereto the affidavit of a registered voter of the State, stating that all the signatures to the paper were made in his presence, and to the best of his knowledge and belief, each signature to the paper appended is the genuine signature of the person whose name purports to be thereunto subscribed. Each petition shall be filed with the Clerk of the County, or City and County, in which it was circulated and said Clerk shall forthwith determine the number of names upon said petition which were upon the great register of the County or City and County at the last preceding general election or thereafter. Said Clerk shall thereupon forward to the Secretary of State a

copy of said petition, except as to the signatures thereon, and a certificate giving the total number of names of said registered voters of the County that are appended to said petition. When from the copies of petitions and certificates as to number of signers thus filed with him, the Secretary of State shall ascertain that any petition is sufficient in form to require action on his part, or the part of the Legislature as herein provided for, he shall forthwith notify the various clerks from whom he has received the copies of the petition to determine the genuineness of the signatures attached thereto.

This shall be done by each County, or City and County, Clerk publishing once in the official newspaper of the County, a copy of the petition filed with him, including the signatures thereunto appended, arranged alphabetically.

Any signatures of registered voters to said petition filed with the Clerk subsequent to his report to the Secretary of State shall be included in said publication.

Each signature whose genuineness is not called in question by the sworn affidavit of the owner thereof within 10 days of the date of said publication shall be accepted as genuine, and the number of genuine signatures to the petition as thus determined shall be certified by the Clerk to the Secretary of State. The original sheets of the petition shall also be forwarded to the Secretary of State, who shall present the same, together with the certificate of the County, or City and County Clerk, to the Legislature.

There is one peculiar thing in connection with the proposed amendment which deserves attention. Both the optional referendum proposed, and the obligatory initiative are confined to such laws as the Legislature itself might enact—that is to laws not contrary to the Constitution of the United States, or of California. It thus appears that while a majority of a single vote would carry a measure if proposed as a constitutional amendment, a unanimous vote of the electorate would not carry it if contrary to the provisions of the State Constitution. Some explanation is needed of the reason for giving a greater power to the popular mandate in one case than in another.

Another thing which seems common to all existing Direct Legislation laws—state or municipal—which have come to our knowledge, is the absence of any adequate method for verifying the signatures to petitions. It would seem that in all cases there should be required certificates, accompanying the petition, from the custodian of the Great Registers in each County, that the names on the petition were all qualified electors, and that the signatures are genuine, as shown by comparison with the signatures on file with the County Clerk or Registrar—such certificate, duly verified, to be prima facie evidence of the facts therein stated. That precaution, together with the publication of the list of signatures as provided in the proposed amendment would be satisfactory. Publication alone is not, with only 10 days allowed for voters all over the County to go to the County seat and swear to a denial of signature.

## VARIOUS PLANS OF REFORMS.

Direct legislation will be more intelligently discussed if it is considered as one of several proposed remedies for the Boss and Machine legislation which exists in all our States and which invariably proceeds by corrupt methods. All recognize existing evils, but the political philosophers do not agree at all as to the remedy. The remedies which have been suggested are along the following lines:

1. DIRECTION OF THE LEGISLATURE. This is to be accomplished by greatly strengthening the executive power by giving Heads of Executive Departments seats in the Legislature either as elected members on the British and British Colonial plan, or ex-officio, and without votes, but in either case with much responsibility for the legislative program. In the States this would probably involve appointment of the State officers by the Governor instead of their election, as now, by the people. The best American exponent of this theory is Gamaliel Bradford, who discusses it exhaustively in his two volume work, "The Lesson of Popular Government," (Macmillan & Co., 1899.)

II. REFORMING THE LEGISLATURE. The advocates of this method of reform are of two classes, whose proposals are as follows:

1. Arouse the well-meaning and intelligent majority to exert their power—in other words "Get out the good citizens."

We are all familiar with this remedy which has not thus far seemed to cure—even with the aid of what we call the Australian ballot, but which is not the Australian ballot at all. The latest—and apparently the last possible—device to galvanize the "good citizens" into life, or at least signs of life, is the "Direct Primary" by which these estimable people vote for delegates to Nominating Conventions without leaving the comfort of their arm chairs. As Mr. Haynes has pointed out, a law for Direct Primaries was one of the first fruits of the Initiative in Oregon.

2. Proportional Representation. This is a plan which abandons the method of electing one representative from a small geographical area, and substitutes larger areas with several representatives with some method of cumulative or other voting by means of which as many minority groups as may be deemed desirable may each have its representative in the Legislature. The best known American advocate of this plan is Professor John R. Commons, whose book, "Proportional Representation," sets forth the advantages of this plan in detail. There is a large propagandist literature on the subject.

III. CONTROLLING THE LEGISLATURE.—This is the initiative and referendum method which is now before the Club.

Incidentally it may be remarked that the propagandists of classes I. and II. demonstrate that the plan of class III. is worse than useless; those of classes I. and III. demonstrate the same of the plan of class II., and those of classes II. and III. demonstrate the same of the plan of class I.—all to the entire satisfaction of the demonstrators.

## RADICALS FAVOR DIRECT LEGISLATION.

The method of direct legislation is the plan naturally favored by the more radical reformers. It is a cardinal tenet of the Populists, the various labor parties, all wings of the Socialists and a large sprinkling of plain social philosophers. Recently it has been taken up by the Prohibitionists in connection with whose views it has long been in general use in this country, legislative bodies, great and small, being especially shy of that very ticklish subject. Numerically, and perhaps morally, it has a much stronger support than other plans of reform. The avowed object of these classes is to promote radical legislation or attempts at legislation.

## LITERATURE OF THE SUBJECT.

There is a large volume of literature on the subject of Direct Legislation. The propagandist publications, of course, are of little value, for no propagandist discusses any question fairly; and the more honest and earnest the propagandist, the more unfair his discussion, for he is positively unable to see but one side. The Swiss experiment, however, has attracted the attention of many scholarly and impartial men, and any good public library is likely to contain all information necessary to the formation of a sound judgment. In this country the most useful monographs are probably to be found among the publications of the Johns Hopkins University, the University of Pennsylvania and the American Political and Social Science Association. Useful articles can be found in the more solid magazines and reviews, and are easily found by the aid of Poole's Index. See Oberholtzer, Referendum in America, pp. 400-404 for large list of references, American and foreign (edition of 1900). Any two or three of the best, however, will contain

about everything of importance. Among the books found in the public library of this city which contain useful information or analysis are Sear's Government of the World Today; Common's Proportional Representation; Bryce's American Commonwealth; Bradford's Lesson of Popular Government; Oberholtzer's Referendum in America. Whoever will examine all these books will have before him about all the facts, suggestions and arguments which he needs.

## THE REFERENDUM IN AMERICA.

We do not all realize how much direct State legislation is already enacted in this country. What we are doing in California will appear later, but this State is regarded as quite advanced in this cult. Except in the three states mentioned by Dr. Haynes we have not adopted the Swiss form which is now proposed, but incorporate legislation in our Constitutions. A Constitution, as conceived by the fathers of the Republic, was an instrument creating a government, delimiting its powers, and defining certain individual rights. The authority of the governments thus created extended to all ordinary subjects of legislation. The Constitution of the United States is such an instrument under which there is growing up a government by legislation and judicial construction, very much as the common law of England grew up. The early State Constitutions were similar, but as, in the opinion of the people, the powers thus conferred were abused, new Constitutions were formed and adopted into which was inserted, by popular vote, a great mass of detailed legislation. This is roughly indicated by the increased length of modern constitutions. Poore, in his work on Charters and Constitutions, prepared the following table which has been copied by most later writers. The comparison is on the basis of pages of uniform size.

### OLD AND NEW CONSTITUTIONS.

| | Constitution of | No. Pages. |
|---|---|---|
| Pennsylvania | 1776 | 8 |
| " | 1790 | 8 |
| " | 1838 | 10 |
| " | 1873 | 23 |
| Missouri | 1820 | 12 |
| " | 1865 | 21 |
| " | 1875 | 33 |
| Texas | 1845 | 16 |
| " | 1868 | 21 |
| " | 1876 | 32 |
| Virginia | 1776 | 4 |
| " | 1830 | 7 |
| " | 1850 | 18 |
| " | 1870 | 21 |
| Illinois | 1818 | 10 |
| " | 1848 | 21 |
| " | 1870 | 25 |

In a volume of Constitutions published by our state government the Constitution of the United States occupies twenty-two pages and the Constitution of California eighty-seven pages, and new popular legislation is proposed by almost every Legislature.

## POPULAR ENACTMENT OF STATUTES.

But constitutional legislation is by no means the extent of the employment of the referendum in state legislation in the United States. The Constitutions of the majority of the States now provide for the obligatory referendum in respect to some measures not covered by the Constitution. All these have been collected by Dr. Oberholtzer in his work, "The Referendum in America," and are far too numerous

and varied to be mentioned here. In California no law creating debt exceeding $300,000, or changing the location of the State Capital is valid without approval by the people. In general, the laws requiring popular approval are of the following classes, which, however, do not by any means include all: Changing the State boundary; contracting indebtedness; aid to railroad or other corporations; the disposal of State property, as canals, railroads or water fronts; creating banking corporations; vexatious questions, as those relating to the suffrage or the liquor traffic; and laws fixing the basis of representation. In some States the Legislature has the option to submit laws to the vote of the people, and in others—Nevada, for example—such a course has been held unconstitutional.

## DIRECT LEGISLATION INCREASING.

The tendency, whether right or wrong, to increase the amount of direct legislation is therefore very evident, and the question before the Club is whether it shall favor the initiative, and the general referendum at popular option, as proposed by the amendment introduced in the last Legislature, or the initiative, with the referendum at the option of the Legislature, as proposed now, or neither.

## THE INITIATIVE.

That depends on the object which we have in view. If the people burden themselves with the labor of direct legislation they must be assumed to do so from some special reason. It would seem to be fair to infer something of the nature of that reason from the character of the organized bodies which most earnestly favor it. These, as already stated, are the Labor Unions, the Populists, the Socialists, and latterly, the Prohibitionists. There can be no doubt that the object of all these bodies is to conduct a continuous campaign of discussion and persuasion in favor of their respective tenets. That is a perfectly legitimate object, and without quoting authorities it may be stated in general terms that the principal use thus far made of the initiative in Switzerland or elsewhere is to propose extreme measures which are usually voted down. In the State initiative it is usually provided that five per cent of the electors may force a vote on any proposition. The question is whether it is best for everybody that the discussion of the measures proposed by extremists should be precipitated in this way, or whether it is more desirable that they be left to make their way, if they can, by the more usual, not much slower, processes until they finally result in a Legislature which is ready to adopt them. There is no doubt that the initiative, if in force in this State, might, and would, sometimes be used to secure votes on propositions of which the people are almost unanimously in favor, but in respect to which the Legislatures refuse to execute the popular will. For example, if the initiative were now in force, there is very little doubt that the people would speedily enact a law which would put a stop to the unblushing, contemptible and villainous plunder of the treasury by successive bands of legislative robbers under the pretense of appointing necessary "attaches" of the Legislature, but unless our experience should greatly differ from that of others, the most of the measures initiated would be for the undue benefit of some class, the exploitation of the theories of unbalanced minds, or looking to a change in the form of our civilization. We have the initiative in San Francisco, and there are now pending five charter amendments, submitted on petition, intended to secure special advantages for city employes which most members of this Club would probably think grossly improper, and one, which will probably be submitted, which most of us would probably consider in the interest of better government.

## THE REFERENDUM.

The object of the referendum is entirely different. It is doubtless best to recog-

nize that is mainly to prevent corruption by rendering it impossible for the corrupted to deliver the goods, and also to prevent extravagance. Our Legislature is already tied up very tightly in many respects by very stringent provisions of our Constitution. Doubtless, however, it still has a wide range of action in which illicit profit is possible to those who seek it, and it is very plain that some seek it. The question is whether we can restrict this range without incurring still greater evils. Take insurance for example. No subject is more prolific of "cinch bills" than insurance, and yet one may gravely doubt whether the mass of the electors is competent to legislate wisely on so intricate a subject as insurance. Then there is the question of assessment and taxation. No subject offers greater temptation or greater opportunity for corruption; and yet it is doubtful whether many members of this Club would feel competent to vote on a law changing our system of taxation without the advantage of such discussion as the session of a Legislature affords. It is unwise to ignore either the advantages or the dangers of direct legislation.

## GETTING OUT THE VOTES.

There is a good deal of apprehension lest electors may neglect to vote on laws which may be submitted to them, founded on the general experience in the adoption of Constitutional and charter amendments. Professor Commons—who, it must be remembered, does not favor direct legislation—has collected some Swiss experience on this point, quoting several writers who seem to have made the original investigations. He quotes:

"In Switzerland, of the twenty federal referenda from 1879 to 1891, the average vote was 58.5 per cent of the total number of voters, ranging from 40 to 67 per cent. Upon the law guaranteeing employment to every able-bodied citizen (which was defeated) it was 56 per cent. In Zurich a larger percentage of votes is cast, owing to a compulsory voting law, the average on 133 cantonal propositions of all kinds being 74 per cent of the eligible voters. Twenty-six per cent of the votes were blanks, while in two recent elections of candidates 21 per cent and 24 per cent were blanks."

They could bring the horse to water, but they could not make him drink.

## GOOD AND EVIL RESULTS OF DIRECT LEGISLATION.

The judicial minded students of direct legislation summarize the results of direct legislation as observed where it is established, somewhat as follows—mainly referring to the referendum:

I. It minimizes legislative corruption and corrupt lobbies.

2. It educates the masses of the electorate.

3. As a rule, it does not result in radical changes of public policy.

4. It proves the numerical weakness of extreme radicals.

5. It cannot deal intelligently with questions of detail.

6. Good laws, as well as bad, fail of adoption because the electors are suspicious of details which they do not understand, and either refuse to vote or vote against them.

7. It lowers the character of Legislatures by making membership unattractive to men of ability.

8. In regard to the initiative there is the fundamental objection that the laws are not the result of the give and take of debate, making compromise and verbal precision possible, but are usually the work of extremists, and are consequently defeated. It may be added that in the United States there would be great

danger of laws thus drawn being found unconstitutional. Almost anybody can draft an unconstitutional law.

9. In case of the adoption of a bad law there is great difficulty and loss of time in repealing or amending it.

## LIMITED DIRECT LEGISLATION.

It is evidently easily possible to so limit the function of direct legislation as to eliminate a great mass of subjects in respect to which the people are not likely to desire to take action and include only those as to which the Legislature is most likely to abuse its authority. The suggestion seems worthy of consideration. It is also possible, and would seem desirable, to include in the action some method of verifying signatures in case of initiative petition, a matter in which frauds are morally certain to be committed by paid canvassers. The relative authority of a mandate of the people when given in the adoption of a constitutional amendment or the passage of a submitted law would seem worthy of consideration by the proponents of direct legislation.

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Up to this point the report has been prepared by Mr. Edward F. Adams. The following was prepared by Mr. John P. Young, working independently. As time has not permitted the organization of a group of members to consider the reports, and combine them into one, it seems best to let each of those who have prepared matter to stand responsible for his part. The numerals prefixed to quotations from President Weinstock's paper are made to correspond with those prefixed to the same quotations in the earlier part of the report.

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## NOT A DEMOCRATIC FORM OF GOVERNMENT.

3. Our Government was meant to be a democracy.

Whatever may be the modern tendency it is quite certain that the founders of our Government did not intend to create a democracy. In framing the Constitution they provided that "the United States shall guarantee to every State in the Union a republican form of government." (Art. 4, Sec. 4.) A republic is a government distinguished from a monarchy on the one hand and generally from a pure democracy on the other. In the latter case the mass of citizens meet and choose the executive, as is still the case in certain Swiss cantons. In a republic the executive is usually chosen indirectly. * * * Republics may be oligarchies, as formerly in Venice or Genoa; or military, as in ancient Rome (Century Dictionary), or highly centralized governments, as in France; or the system may be mixed, as in this country.

The convention which framed the Federal Constitution had suggested to it a variety of ways of electing the Chief Magistrate. Among them may be mentioned: "By the people at large; by the National Legislature; by the Legislatures of the States; by the executives of the States; by electors chosen by the people; by electors chosen by lot; by the National Legislature on the nomination of three candidates by each of the several States; by the National Legislature of one candidate from each State, and by lot. Population election never succeeded in obtaining more than the vote of one State. * * * The method finally adopted was due to the almost unanimous desire to avoid popular election." Woodburn says:

"It was always, and by all, contemplated and expected that the electors would be absolutely free, independent and unpledged, vested with the right to vote according to their own judgments and designed to act without restraint or extraneous influence whatsoever."

One delegate in the convention is quoted as saying:

"It would be as unnatural to refer the choice of a proper character for Chief Magistrate to the people as it would be to refer a trial of colors to a blind man."

The compromise which resulted in the creation of an upper house of Congress (the Senate), to be chosen by the Legislatures of the States, shows also how far the democratic ideal was from the minds of those who laid the foundations of our institutions. In fact, the testimony is all one way on this point, and it negatives the assumption that "our Government was meant to be a democracy."

## HOW TO ESCAPE VOTING FOR BAD MEN.

4. We vote for men notoriously unfit, whom we know to be the tools of corrupt political machines, and yet we give them full power to act.

If the electorate is so unmindful of its duty as this charge implies, what assurance have we that it will do any better when in addition to electing men it has imposed upon it the still more onerous responsibility of passing judgment upon the value of a proposed law. The persons who will be called upon under the referendum to pass upon laws will be precisely the same as those who now "vote for men notoriously unfit whom we know to be the tools of corrupt political machines." In this view of the case it would be extraordinary, if it were true, that "the first instance has yet to be cited where a bad or vicious measure has been carried by vote of the people." It is inconceivable that the same body of men who willfully or negligently vote for the tools of corrupt political machines should suddenly be endowed with sound judgment and quickened consciences when called upon to pass upon the desirability or non-desirability of a proposed law or a proposition to spend the tax-payers' money.

That the people do vote for bad men may be conceded; that they knowingly do so is hardly credible. The truth of the matter would be best expressed by stating that good citizens neglect taking the precaution to put up good men for office, and that when election day comes they vote for those they deem best fitted for the positions to be filled. The only way to overcome this evil has often been pointed out. It is by beginning at the ground and working up. Not by merely going to the primaries can a reform be effected. Work must commence earlier, and it must be along the very lines which the advocates of the referendum deprecate. It is impossible for the general voter, no matter how well informed he may be, to have a personal knowledge of the candidates for office. Their character and fitness must be ascertained by men who will undertake the work of inquiry and who will vouch for the men they propose. This may be done with precisely the same kind of machinery that the bosses employ to effect their purposes. If a few good men would meet in every district in San Francisco and put up a ticket or tickets for the primaries, for which they would vouch, good citizens would vote for their nominees in the full assurance that when they met in convention they would put forward good candidates for the offices to be filled. This is the representative system in its simplest form, but it is as indispensable if good results are to be obtained in this particular as it is when it is sought to procure good laws. And for precisely the same reason. Because the mass of the people are unfitted to judge. In the one case they lack, through absence of information, a knowledge of the character of aspirants for office, which can only be obtained by the method above suggested; and in the other case, they are deficient in the necessary training and are compelled to fall back on advisers, who, as often as not, are as incompetent as those they advise, and are animated as much by prejudices as by the desire to secure what is best for the community.

## VICIOUS MEASURES VOTED FOR BY THE PEOPLE.

5. The first instance has yet to be cited where a bad or vicious measure has been carried by vote of the people.

In the face of the fact tbat the State Constitution of 1879 has been amended in thirty more or less important particulars, and tbat its complete revision has been proposed, this claim that popular judgment can be depended upon to detect and stand up for the right can hardly be maintained. It is quite obvious that when a provision of the Constitution adopted by popular vote is set aside by another popular vote a mistake was committed either in the first or last instance. There is good ground for the belief frequently expressed that if the people were afforded the opportunity to do so they would cheerfully set aside a great deal of that which they enthusiastically voted for a quarter of a century ago, and that in many instances they would completely reverse their former judgment, because they believe that what they voted for has proved bad.

As to the disposition of a large number of the people to vote for absolutely vicious measures, that can hardly be questioned. In amending article 9, section 7, of the State Constitution, the majority voting for the change appear to have been governed by the idea that it is wise for the State to increase the cost of production of an article. The section, as amended, provides for the printing of school textbooks at the State Printing Office, an illy equipped establishment, the management of which has been notoriously inefficient, because under the control of political influences. There was no attempt to investigate the charge of tbe opponents of the change that it would result in increased cost of books; nor was there any attempt to refute the assertion that the printing office was extravagantly conducted, and could not be brought up to the state of efficiency which would make successful competition with outside publishers possible; nor was there any endeavor to answer the argument tbat it was absurd to expect a board subject to political influences to prepare satisfactory copy for textbooks. The ulterior consideration, that the consumer might get the books at less price at the expense of the general taxpayer, prevailed, and the irregularities and extravagances of the public printing office were condoned, and the amendment, which has proved wholly vicious, was adopted. And the people did not even have the satisfaction of securing books at less price, for the State books have steadily cost more than better and better made books could be bought for in the open market. A better State Board of Education now supplies good texts, but at a cost far in excess of what the same books could be obtained for from the original publishers to whom we pay royalty.

Another instance of vicious referendum legislation is contained in article 11, section 18, of the State Constitution. This section of the Constitution originally embodied the wholesome doctrine that "no county, city, town, township, board of education or school districts shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof." This provision was deliberately violated by San Francisco Supervisors during several fiscal years, and finally, when the amount of the irregularly incurred indebtedness became large enough, those holding the evidences log-rolled for a constitutional amendment, which actually condoned the violation of the instrument. The proviso permitting San Francisco to pay these claims would probably not have carried, if common cause had not been made with the holders of the obligations and school teachers who sought to obtain certain unpaid back salaries. The amendment not only broke down a well-settled rule, but introduced into the Constitution the anomaly of special legislation—a flagrant offense, as another section of the instrument was designed to prevent the great abuses flowing from this source by absolutely prohibiting special legislation.

That the people cannot be safely appealed to in matters involving the disbursement of public funds is shown by the facility with which propositions to

run cities and other political subdivisions into debt are carried. Many cities in the United States are heavily burdened through the ease with which suggestions to discount the future are adopted by the electorate. Visionary projects receive the approbation of the electorate, a large portion of which, in voting affirmatively, is actuated by no other motive or desire than to create work, or, as it is often expressed, "to put money in circulation." It should not be forgotten by those who claim that the people can be safely trusted to act intelligently in matters of this kind that the apparent interests of the mass of property owners and the propertyless are often diametrically opposed. Land jobbers and others having schemes to put through rely on this divergence of interest, and do not hesitate to appeal to the non-taxpayer on the ground that he has all to gain and nothing to lose by voting for improvements which involve the expenditure of large sums of money.

## PEOPLE DISTRUST THEMSELVES.

The propensity of the electorate to hold the purse strings loosely was well understood by the framers of the State Constitution of 1879, and by the people who voted for its adoption. Bitter experience had taught them that the right to make gifts to corporations was often abused. Cities, towns and other political subdivisions of the State had lent their credit in an utterly reckless manner and were receiving no return for their generosity, excepting high rates for the accommodations they enjoyed. Section 31 of article 4 was framed for the protection of the people. It provides that:

"The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city, or county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have the power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever."

If this provision had not been adopted the State would now be owned by the corporations, for the appetite for making gifts and granting aid grows with what it feeds upon, and people seek to remedy one set of blunders of the generous order by committing others. There never was a more sincere admission by the people of their incapacity to manage their own affairs by direct popular vote than is contained in the above quoted absolute inhibition of section 31, article 4, and the most enthusiastic advocates of the amendment which brought about that result were largely of the class that now fancies all the evils of the body politic would be done away with by dispensing with all checks upon popular impulse.

## IT IS THE "UNFIT" WHO REFRAIN FROM VOTING.

6. When but a small portion of the electorate votes on measures submitted to it, it is the "unfit" who voluntarily disfranchise themselves.

The intrinsic evidence of the figures of recent elections at which propositions were submitted to the people do not bear out this assumption. Take, for illustration, the general election of November 8, 1898, at which 278,389 votes were cast for State officials. At this same election there was submitted a proposition to hold a convention to revise the Constitution, and only 107,563 of the total number of those voting expressed an opinion on the subject. According to the theory advanced by the advocate of the referendum 170,826 of the qualified electors in the election of 1898 were in the unfit category. There is a more reasonable explanation of the abstentation from voting in this particular case. Only

42,556 electors voted "for" revision. That is, only a little more than one-seventh of those voting in this State in 1898 were willing to authorize the breaking away from moorings implied in the proposition to revise the Constitution. The 65,007 who voted directly against, and the major part of the 170,826 who failed to vote on the subject at all may be set down as opposed to the principle of the referendum.

Other amendments were voted for and against at this same election, the highest number of ballots cast for and against a proposition being 149,853. It is significant of the value of a popular vote that 66,260 votes should have been cast against an amendment, the object of which was to provide for the succession in the Governorship. Absolutely no argument was urged against so sensible a proposition as that embodied in this amendment, whose only purpose could be to avoid confusion in case of the death of the Lieutenant-Governor as well as of the Governor, during their incumbency, yet, as above remarked, 66,260 voted "no." There may be some ground for the assumption that a certain proportion of the electorate votes "no," without reference to the merits of the proposal submitted, as it has been observed that the negative vote in many instances is of about the same magnitude. At this election 65,007 voted against revision of the Constitution, and 66,260 against making provision for the gubernatorial succession.

## SOME SAN FRANCISCO EXPERIENCES.

In 1899 several proposals were submitted to the electorate of San Francisco, all of them involving the expenditure of large sums of money, the aggregate being over $18,000,000. At this election only 29,972 votes were cast. One year later, at a general election, 66,260 votes were cast, and there were nearly 70,000 registered. In this case 40,000 were "unfit" to vote, if the assumption that all who refuse to vote on projects referred to them is sound. It is, of course, impossible to determine what proportion of the 29,972 persons who voted "for" and "against" the Park Panhandle project were fitted by experience and training to pronounce judgment upon the question whether or not it is desirable to procure a boulevard leading to the Park at an expense of over $5,000,000, but, in the nature of things, very many must have been absolutely incapable of forming a judgment which would command respect in so important a matter as running into debt to the amount of $5,000,000 for the purpose mentioned. Undoubtedly a large majority of the 21,901 affirmative votes were cast by men who believed that the inauguration of such projects as were proposed would make work plentiful, and who did not give consideration to the possibility that the assumption of the indebtedness might bring evil in its train. On the other hand, it is equally safe to assume that many of the 40,000 absentees stayed away from the polls because they thought that opposition was useless, or that their assistance was not required to secure affirmative action. It is quite certain that there was as large a proportion of men amply qualified to judge of the merits of the propositions presented among the absentees as there was in that portion of the electorate that took the trouble to vote.

## CHARTER EXPERIMENTS.

On December 4, 1902, eight amendments to San Francisco's charter were voted upon. There were 71,069 registered voters, but only 14,617 went to the polls. In the same month and year there was a special election to decide whether the city should operate the Geary-street railroad. At this election, although special efforts were made to get voters to perform their civic duty, only 26,615 votes were cast for and against the proposition. San Francisco, during the past quarter of a century, has voted three times for a new charter. On September 8, 1880, only 23,398 votes were cast at the special election held to consider the adoption of a charter laboriously framed by a Board of Freeholders. In this instance the in-

strument offered was rejected chiefly because it was antagonized on the ground that it provided against intramural burial. Prejudices were aroused and they carried the day. It is a sufficient commentary on the efficacy of the referendum to state that what was so violently opposed in 1880 is now accepted as a matter of course. In 1883 another charter was submitted to the voters. Although its provisions were discussed with some approach to thoroughness, the number who went to the polls was only 18,764. Although a new organic law was sadly needed by the city no further attempt to secure one was made until 1898. On May 26th of that year a charter was submitted to the voters, 26,969 voting out of a possible 70,000. In 1903 the registered vote being 71,098, ten propositions to issue bonds to the amount of $18,135,000 were submitted. The total vote on this occasion was 27,234.

## DISHONEST VOTING.

These figures seem to point conclusively to a disinclination on the part of a majority of the voters in San Francisco to attempt to decide matters which they felt incompetent to pass judgment upon. Instead of these recalcitrants being branded as unfit, in all probability the most of them deserve commendation for their honesty. It may not occur to the zealous advocate of the referendum that there is something approaching turpitude in an elector pretending to have an opinion on subjects about which he knows absolutely nothing, and upon which he is incapable of forming a rational judgment. It is safe to assert that in ninety-nine out of one hundred cases in which men vote for or against bonding propositions upon their own judgment, if their interests were directly affected they would consult competent advisers—lawyers, real estate men or other well-informed persons. On other occasions than elections the average man if called upon to express an opinion concerning a point of law would probably exhibit modesty and say that he leaves such things to men with legal training, but on the days when charters and constitutions are submitted he votes for or against the whole bunch of laws embraced in them and never for a moment realizes that he is shamming—making believe that he is informed about something regarding which in nine out of ten cases he is absolutely ignorant.

## SUGGESTED PROCEDURE BY THE CLUB.

The Chairman of this Section has found it impossible to assemble a group of members who, within the limited time available, could make any such study of the subject as to render any collective opinion on the merits of the case which they would probably be willing to stand by. The Section therefore makes no recommendation, but suggests the following procedure:

Let some member who so desires offer the following resolution:

"That this Club favors the adoption by California of the system of direct legislation for State purposes known as the initiative and referendum, substantially as proposed by the Direct Legislation League of California."

With that resolution before the Club it will be possible to offer, in succession, the following amendments:

1. To strike out the initiative.
2. To. strike out the referendum.
3. To strike out all after the word referendum, and substitute "but so restricted as to be applicable only to matters of revenue, State franchises, suffrage, liquor traffic, expenditure, State property, indebtedness, election of United States Senators," or other objects, as the mover may desire.

It is believed that the foregoing resolution and amendments will raise all the questions which the Club will desire to discuss.

## Discussion.

THE CHAIR: If there is no objection, the Club will hear from those appointed to open the discussion before taking up the report of the Section. The first speaker will be Mr. Charles Wesley Reed.

Mr. REED: I am very earnestly in favor of the initiative and referendum, and now that I have heard the report of the committee I am only sorry that I did not ask the opportunity to submit a minority report.

The Constitution of the State, Article 11, Section 8, provides for the referendum. Cities of 3500 can frame their own charters and if adopted by a vote of the people such charters become the organic law of the city, superior to the State laws in municipal affairs.

This provision was inserted to prevent San Francisco from repeating the experience of Philadelphia. In that city the gas works, owned by the municipality, were leased to political speculators at a grossly inadequate rental, involving much scandal and corruption of the City Council. Again, when the street railway franchises ran out in that city a few years ago, they were awarded to a new company for a small sum of money, and immediately resold to capitalists at au unknown price, but commonly supposed to be ten million dollars, which, of course, was graft for all concerned. This was done despite the fact that John Wannamaker had deposited a certified check for one million dollars with the Mayor of the city as a guarantee of his offer to pay an adequate sum of money for the franchises.

San Francisco now owns a municipal railroad popularly known as the Geary-street road. It is being operated by the old company on sufferance of the Board of Supervisors. The Geary-street corporation gives to the Supervisors the percentage of the gross receipts required by the charter, but it has no legal claim to continue operation of the road for an hour. If the present admirable Board of Supervisors was controlled by a gang of grafters such as has afflicted this community in times past, they could award this franchise for the Geary-street Railroad to any one they saw fit. The fact that franchises must be sold to the highest bidder is of small benefit, inasmuch as the Supervisors can load the franchise down with conditions that would make it unsalable except to those on the inside. Thereafter they could change these conditions to the advantage of their friends. The only effective remedy for the people in case they were betrayed by their representatives would be to circulate a petition and secure thereto the signatures of fifteen per cent of the electors within thirty days of the time the Mayor had signed the ordinance granting the franchise, or it had been passed over his veto. This is a very short time and a great deal of work would have to be done, but this referendum in the charter is the main protection of the people against dishonesty on the part of their representatives in the matter of franchises. Every franchise for railroads in San Francisco will lapse within the next twenty-six years. These franchises are capitalized to-day at sixty million dollars, because the total capitalization of all the railroads of the City and County of San Francisco exceeds eighty million dollars, while the experts say that twenty million dollars would more than replace all the tangible property. When these franchises expire and the United Railroads are running at sufferance, as the Geary-Street, Park and Ocean Railroad is operating, then the managers of this foreign corporation could afford to pay millions of dollars for a vote in the Board of Supervisors rather than lose their franchises. It would be almost impossible to secure the required number of signatures within thirty days unless there was a great popular uprising backing the proposition and plenty of money to circulate it.

With respect to such matters as politicians are afraid to tackle, like raising

the license on saloons, the initiative offers the sole remedy. In San Francisco there are over three thousand saloons and they pay but twenty-one dollars a quarter, or eighty-four dollars a year, for a license. The experience of all other cities in the United States of the size of San Francisco is that five hundred dollars is the least license to charge saloons in cities of that class, while many of them charge as high as one thousand dollars annually. This is without any intention to penalize the saloons, but is merely licensing them as a business proposition. It is safe to say that the liquor license will never be raised to anything like what it should be, unless it is done by a vote of the people operating on an ordinance submitted to them by means of the initiative.

In a word, the initiative enables the people to provide such good laws as their chosen representatives refuse to pass because of the influence of interested parties. The referendum, on the other hand, enables the people to defeat laws which their representatives are induced to pass by corrupt means. When we consider that such men as James Bryce assert that the one conspicuous failure in American politics is our municipal governments, operating through the municipal legislatures, we must realize what a tremendous and effective check the referendum will be on the evils attendant upon the bribery of the people's representatives. It is safe to say that the United Railroads of San Francisco, through its foreign managers, will spare no means, however corrupt, to renew their franchises when they expire. But with the referendum in the charter, if the people act quickly, they have an effective check to such illicit bargains.

The initiative, therefore, allows the people to vote upon laws which their unfaithful representatives refuse to submit to them. The referendum allows the people to veto laws which their unfaithful representatives are bribed to pass. In the latter instance it will take away from the corporations the incentive to bribe because the legislators cannot deliver the goods. Whatever faults are attendant upon the initiative and referendum are of no moment as compared with these great advantages.

MR. BERWICK: Mr. President and gentlemen of the Commonwealth Club: It was with much gratification, sir, that I listened, last meeting, to your able apology for the referendum, and noted your conclusive replies to various objections. I wish to add my few words rather in the role of apostle than apologist. I want to point out some few of the many benefits that will accrue to our people from its adoption. Possibly, seeing that the making of men is the ultimate end of all good government, the educational benefit is chief. We have established an elaborate system of schools and universities to give our youth the A B C of an education. But, if I may modify a hackneyed quotation from Shakespeare, I would remind you that

"All the world's a school,
"And all the men and women merely scholars."

Why, gentlemen, I believe that even the Commonwealth Club is an educational institution—THE highest educational institution in the State, for its most advanced scholars and thinkers. We meet here to study together the Map of Life, with intent to shape the world's ends to the pattern of righteousness. Our methods are two-fold—personal example, and the spoken and printed word.

The first effect of the introduction of the referendum would be a tendency to convert this great nation into one vast Commonwealth Club. What consummation more devoutly to be wished for can we, its present members, imagine?

Further, this Club represents, I believe, the embodiment of American ideals. First of these ideals is what I may call the town-meeting ideal, the government "of the people for the people and BY the people." The referendum has been described as "an attempt to govern great communities by permanent town meet-

ing." How far and how rapidly we have been drifting away from this particular ideal all here know. Our present practices have landed us in a political condition perhaps less desirable than that of England in the days of the rotten pocket borough system. Less desirable, because while there some duke or earl nominated the coming member of Parliament, that earl or duke having a lively interest in his country's welfare, here the attorney of some self-seeking corporation prepares the slates for both political parties. Under date of the 7th of the current month one San Francisco newspaper heads its report of the contest for the State Senatorship, "What Herrin Wants Is Now the Talk."

The referendum would tend to put a stop to this most undesirable present condition. A whole Legislature might wear the corporation collar in vain. The popular fiat could promptly nullify any and all corrupt legislation. There would cease to be any incentive to bribery at elections, and the work of the lobbyist would be labor lost. Other accruing benefits would be manifold. The referendum makes more easy and simple all other reforms; purifies and elevates party politics; lessens the power of demagogues by stimulating individual thought; terminates the reign of the "boss" and the "ring"; changes partisanship into patriotism; simplifies elections, because the voter passes on questions segregated, and not lumped in a party platform; tends to diminish the number of laws made in private interests; increases the respect for and aids in the enforcement of the law, since the law will then be the expression of the people's own will; encourages the best men again to enter political life, because they will do so retaining their self-respect and wearing no collar; raises the press from degrading personalities and deceitful sophistries; invests voters with a nobler manhood and higher dignity, removing from them that feeling of hopelessness, helplessness and ineffectuality which is so often now expressed; and, finally, favors and ensures the stability of our institutions.

These are all desirable ends such as this Club was formed to promote. Whatsoever things make for an ennobled, public-spirited, enlightened citizenship must make for the highest interests of the commonwealth. To think on these things we are here to-night, and, I trust, hereafter to work together heartily for their realization!

PROFESSOR MOSES: The problem involving the advisability of applying the referendum in any particular case is a question of policy that must be resolved by certain general considerations and by reference to the experience of communities where the referendum has been introduced. Among the general considerations to which it is desirable to pay attention is the fact that the introduction of the referendum implies a corresponding abrogation of the representative system. The establishment and development of political representation constitutes the greatest and most hopeful achievement of governmental progress. The referendum, by diminishing the power, and consequently the responsibility, of representatives, tends to overthrow the procedure that is fundamental in the government of the United States. It tends, in so far as it is introduced, to change the form of our government. It may be that the republic in its present form is an experiment, as it is sometimes affirmed, but it is not an experiment that has so far failed as to make us ready to throw up the undertaking. It has its weak elements. The municipal administrations of the country are in large part a disgrace to a civilized people. But there is no important evidence at hand that our cities would be better governed if an attempt were made to have the complicated and technical affairs controlled by the whole body of the citizens. In the management of larger affairs of the State and the Nation, the United States appears to be quite as fortunate as other nations, and the decision of the framers of the Constitution to make this a representative republic appears to be justified by the generally wise National and State legislation.

I find, therefore, no valid reason for favoring so radical a change in our governmental procedure as that here proposed. Knowing that their acts were not final, the representative bodies would lose their sense of responsibility. Their motive to thorough inquiry and careful deliberation would disappear. The standard of scrutiny and judgment of the ordinary voter would be substituted for the standard of men selected on account of their political insight and good judgment.

The adoption of the referendum involves the experiment of substituting democracy for representative government under conditions where democracy has hitherto never been carried out. The Greek republics furnish no important lesson, for they were small, and the great mass of the people was entirely excluded from participation in political affairs. Switzerland, on account of the survival of her traditions of primitive democracy, offers the most favorable conditions for the referendum, but even Swiss advocates of the system affirm "that as soon as the State has increased in powers or in territory, this method of legislation becomes very burdensome and costly."

MR. PHELAN: I cannot agree with Professor Moses when he opposes the initiative and the referendum on the ground that it in any sense offers a substitute for the American representative system; certainly not in the same sense as the substitution would be of the responsible cabinet, known to the English Government, for our executive officers, chosen for a fixed term. Opposition to these reforms is reactionary. When the franchise was extended to a larger electorate in England, the same character of opposition manifested itself. As Gladstone said, in defining the difference between the Liberal and the Conservative parties, the Liberal party had trust in the people, only qualified by prudence, whereas the principle of the Tory party was jealousy of the people, only qualified by fear. There is no reason why trust cannot be reposed in the electorate and there is much reason why trust is misplaced in the Legislature.

Professor Moses thinks that the initiative and the referendum assail the principles of representative government and that we might expect better results from selected men, giving them time and ability to the consideration of public questions. The facts, however, are that these selected officials, sitting in legislative bodies—City, State and Nation—are accustomed to betray the people who elect them; that influences are brought to bear, which perverts their judgment. There may be no question about their ability or their wisdom, but when they are invested with power, they lose their sense of obligation to the public. They may have wisdom, but they lack character and honesty; and I cannot imagine a representative, appreciating his representative position, who would object to the expressed judgment of the people upon a specific measure, either initiated or referred. Would he not rather welcome an opinion fresh from the people—a more recent expression, if you please, of their judgment. If he is there in a representative capacity to serve the people, it does not derogate from his dignity that the people should occasionally seek to express their views through another agency; but the initiative and the referendum are designed to serve as a check on the Legislature, and, at times, as a club to prevent corrupt acts. Its particular purpose is to make perfect the conduct of the Legislature, the people reserving to themselves, as it were, the veto power.

In these days, when corruption is so rife and public service corporations, protected industries and opulent individuals seek to corruptly influence legislative bodies, it is highly important for the perpetuity of our institutions that there be a check upon the Legislature, and that check is clearly afforded by the initiative and the referendum.

We are told to-night by Mr. Adams in his paper that the initiative and the referendum have been introduced in three States, and only in one—that is

Oregon—and only in one instance there, has it been exercised. It is true a large vote, as he claims, is not drawn out on abstract propositions, but there are many reasons for that, not the least of which is that special election days are not general holidays. But it cannot be denied that the vote is fairly representative of the whole vote, nor can it be said that the people in voting on abstract questions, such as constitutional amendments and charters, have been conspicuously wrong in their judgment. In fact, their discrimination has been a matter of general comment. In only one instance was the initiative used in San Francisco, and that is when the pool-sellers proposed an ordinance, by petition, conferring upon them the right to sell pools in the downtown districts, whereas they enjoyed the privilege within the enclosure of the racetrack, and the people voted it down.

MR. YOUNG: Our worthy President, in his interesting paper on the referendum, attempted to dispose of the most serious objection to the system by assuming that the large number of voters who fail to express an opinion on public questions when submitted at elections must be set down as civic delinquents and reckoned as "unfit." I think there is excellent ground for assuming that the contrary is the case, and that it is the "unfit" who display the most alacrity in voting for or against propositions respecting which they lack the requisite ability to form a judgment, or are not sufficiently well informed to do so. On the other hand, there must be many who insist that in public affairs it is proper to put into practice the rule which governs their conduct in private life—that of not acting without sufficient training or information.

It would be impossible to tell how many refuse from conscientious motives to vote on public questions, the proper determination of which requires a highly specialized knowledge which they do not possess, but there must be a large number. Abstention from voting on this ground is not only justifiable; it deserves applause. And on the other hand, those who vote without being properly equipped to pronounce judgment deserve condemnation.

It is extraordinary that good results should be expected from pursuing a course in the management of public affairs which all properly trained business men would deprecate as irrational if applied to the management of a private concern. We are all more or less familiar with the operations of large corporations, and know that they generally impart into the conduct of their affairs the fruits of wisdom gained from experience. Does any one know of one of these aggregations of capital being managed on the "referendum" plan? Is it conceivable that the affairs of the Pennsylvania Company which rival in magnitude the operations of the General Government, could be so conducted? Is it thinkable that the stockholders of this corporation would arrogate to themselves the knowledge and wisdom necessary to frame the laws or the regulations for the proper conduct of the vast interests of the company? Is it not true that even in such matters as those involving the expenditure of large sums for betterments the stockholders, as a rule, prefer to depend upon the judgment of trained men? They even go a step further for by a refinement of the proxy system, stockholders virtually surrender their right to select the men who manage their affairs, confident that even in this matter a few trained and wise men will act with immeasurably better judgment than they could themselves.

When we reflect upon the precautions taken in civil and criminal cases to secure juries competent to deliver a just or an equitable verdict, we are amazed to find men assuming that it would be possible to secure similar results by relegating to an electorate, whose only necessary qualification is the attainment of the age of manhood, questions of vastly greater importance than can possibly come before a court. The code requires that grand jurors "be of fair character and approved integrity and sound judgment." Among the causes of challenge of a juror in

criminal cases are: "Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as render him incapable of performing the functions of juror." In many electors the most of these qualifications are missing. It is true the inmates of an insane asylum cannot vote, but who ever heard of an election board or a registrar challenging a man's right to vote on the ground of want of sound judgment? There is a provision, only recently introduced into our Constitution, that an elector must be able to read the Federal Constitution, but it applies to those only who have registered since the adoption of the amendment. But the ability to read the Constitution does not imply the possession of sound judgment. There are children in our schools who have not reached the age of ten who can perform that feat, but no one will credit them with the possession of sound judgment.

As a matter of fact, the majority of the electorate is utterly destitute of that quality, and for that reason, if for no other, the "referendum" is not desirable. Perhaps, if a high standard of intelligence could be made a requisite to voting the system might be made to work well in practice. But under existing conditions, putting a question to a vote of the people is little better than a lottery. It resolves itself practically into the submission of matters to a jury which is not obliged to listen to the evidence, or to act upon it when it has listened, and that is hardly the sort of a jury from which to expect sensible or honest decisions.

PRESIDENT WEINSTOCK: There are points I wish to touch upon which are these:

First: The critics either assume or lead the hearer to infer that the introduction of the referendum means that every act of the Legislature will be submitted to the people. This, of course, is a mistake. Things will go on precisely as they do now. It is only the exceptional instances that will be referred to the people. I want to point out that the chief enemy of this republic—the thing that this republic has most to fear, the thing that is likely to undermine the perpetuity of our government—is not foreign enemies or foes, but "graft," and the referendum primarily is aimed to kill graft. The average law adopted by the average legislator, where his interests are not at stake, is the result of his best judgment and his highest desires. The change comes only when graft is involved. With the referendum a law, the possibility of graft will be very materially minimized, if not completely wiped out.

What man will pay a legislator a consideration for his vote when he knows that vote is likely to be upset by the people, and what corporation stands ready to bribe a majority of the people? A powerful corporation or individual may be willing to pay money to a few legislators, but is not willing to attempt that upon the people. The referendum is certainly worthy of the highest consideration of those who love their republic and want to see it perpetuated.

THE CHAIR: We have with us this evening Dr. John R. Haynes of Los Angeles, President of the Direct Legislation League of California. The Club would be glad to hear from him.

DR. HAYNES: I listened to the able report prepared by Mr. Adams with interest, and I wish to speak first with reference to a few points as to the intentions of our Constitution. The fathers of our Constitution simply intended that we should elect men to vote as they saw fit for the President of the United States. Is there a man present here to-night who, simply because the men who made our Constitution desired that or intended that, would go back to that day? We have a series of republics, gentlemen, and the Constitutions were framed when our country was forming, when we had no railroads, when telegraph lines did not exist and postal service was poor, when it was so difficult to have communication be-

ween one community and another that it was months before we got reports of the Presidential elections from the different sections. It was not deemed expedient at that time to have a government including referendum because of the difficulty of its actual working in detail. The referendum is simply a check on our present representative system. We are living in pseudo republics. We are not governed by representatives. We are governed by men who are nominated by corporations and who vote at the dictation of the corporations. We are simply tools. We are, under the present condition, simply puppets. In 1902 the railroads of the United States made a net profit of $349,000,000. The Metropolitan Telephone Company in New York City had an income of 462 per cent in six years. Do you not suppose they could spare a small quantity of that dividend to legislation in the City of New York if they so desired? The question as put by the Chairman of the evening is the perpetuity of our representative system of government. I believe in a check representative system. It is the one efficient idea and as far as can be seen it has absolutely no objection except the one single objection that it is too conservative. To-night you have confined the point to States. We have very few States to go by. It is incorporated in the Constitutions of Oregon, South Dakota, Utah and Nevada, where, at the latter place, the people introduced it by an overwhelming majority; so we have four States with the initiative and referendum. The Governor of South Dakota, after six or eight years' experience, has stated that it is a check against hasty and radical government, a check against graft and corruption, and he unqualifiedly endorsed it, although he was violently opposed to it in the beginning. Oregon has tried it. The labor unions tried to have a petition presented against the appropriation to the fair taking place next summer. They did so because of the refusal to employ only union men on its building. They failed to get the necessary seven per cent petition to be presented. The railroad and lumber interests of Oregon tried to have a bill passed granting them certain privileges. They likewise failed to get a sufficient number of people upon their petition to have it brought before the State. The system of primary laws throughout the State of California is of the greatest aid to the men who believe in politics. What we want is a simple democratic primary law. Do you suppose we are going to get that from our legislators? I believe Hades will freeze over first. As before stated, after careful study of the question, there is only one objection, and that is that it is too conservative. One of the greatest advantages of the initiative referendum is the prevention of a large number of laws. The statute books of every State in the Union are filled with an overwhelming number of laws. The average citizen of New York City lives under 50,000 laws, not counting the regulations of the Board of Health, Street Department, etc. Ignorance of the law excuses no man, gentlemen. In Switzerland there have been very few laws made, and what are made are in the interests of the people at large. In regard to some points made in the report of the Section, Mr. Dunlop, Secretary of the League, is better informed than I, as he was more directly concerned in drafting the proposed amendment.

THE CHAIR: The Club will be pleased to hear from Mr. Dunlop.

MR. DUNLOP: When Mr. Adams sent down to us last week for a copy of the amendment we are going to introduce, we did not appreciate the detail with which this Club was going into the subject. The amendment as given to the Legislature contains a form of introduction in the form of a constitutional amendment and also other details which we did not give in our publication for general distribution because we wanted to keep that simple enough for people to read and understand.

In the first place, our proposition does not provide for an amendment to the Constitution of the State of California; it does not provide a basis for amending the Constitution. Personally, I think the initiative as to the Constitution is good.

If these amendments are adopted every protection given by the present Constitution will still exist. The Legislature of its own mind and motion can submit any law they wish to have submitted. The object of that is that if a petitioner brings in a law that is defective, perhaps unconstitutional, the Legislature can say to the Committee: "Gentlemen, this is not just what you want. We will write that up and put it the way you want it." If the Legislature is correct, that Committee will withdraw its petition and allow the Legislature to submit the proposition in its proper form. If, however, the Legislature is mistaken in its criticism, it must submit the proposition as petitioned for, but at the same time they can submit the proposition in the form in which they think it should be submitted. If they are right in their position they will receive the support of the people of the State. The referendum would not apply to the ordinary routine of government. It applies only to penal ordinances, to franchises and to the particular form of contracts. The assertion has been made repeatedly that the initiative and referendum are an attack upon the representative form of government. The principle of representative government is that we select men because of some peculiar fitness. The trouble with our government to-day is that we do not vote on that principle. We do not vote for the man in whose general integrity we have confidence. A man who is interested in a particular question votes for the candidate who agrees with him on that particular question. Suppose this Commonwealth Club at the next election decided that they would go out and work for the candidates best qualified on the representative system of government; you would find that in the caucus and primaries were the emissaries of the great corporations and trusts. They select men that they think will serve their particular interests. They are assisted by the allied vice of the community, which is willing to ally itself with this machine. The time will never come, gentlemen, when we can disregard the personal element in politics. Under the most perfect system the time will never come when we can disregard the necessity of having good public servants, but I do believe that we should have an opportunity to put the representative principle in true working order and that the people should have the right of veto over the action of their public servants.

## Action of the Club.

MR. REED: I move that this Club favor the adoption by California of the system of direct legislation for State purposes known as the initiative and referendum, substantially as proposed by the Direct Legislation League of California.

THE CHAIR: The question is upon the adoption of the resolution.

MR. ADAMS: I move to amend by striking out the words "the initiative."

Motion lost.

MR. ADAMS: I move to amend by striking out the words "and referendum."

Motion lost.

MR. ADAMS: I move to strike out all after the word "referendum," and substitute the following:

"But so restricted as to be applicable only to matters of revenue, franchises, suffrage, liquor traffic, expenditures, State property, indebtedness and election of United States Senators.

Motion lost.

The original resolution was then adopted by a vote of 16 to 9.

Upon motion of Mr. Reed, the Chair was authorized to appoint two members of the Club who, with himself, should constitute a committee to represent the Club in this matter before the Legislature, whereupon the President designated Messrs. George Pultier and A. R. Sprague for that purpose.

The Club then adjourned.

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# REGULATION OF WATER RIGHTS

TRANSACTIONS OF THE

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## The Regulation of Water Rights in California. What System Can and Should be Adopted.

At the meeting of November 9th, 1904, the following paper was read by William Thomas:

In 1872 the State of California adopted a method of appropriating the running waters of the State, which is a disgrace to any statute book. A few years' trial must have shown the utter absurdity of the method adopted, and those of us who came to the State at a later date cannot understand why this grossly defective method should have been permitted to stand upon the statute books. The explanation probably is that the bar of the State was delighted to find such a fruitful source of income, and that the attention of the general public was not

called to these defects until the publication of Bulletin No. 100 of the Agricultural Department of the United States.

## HOW WATER IS APPROPRIATED.

Under the method adopted originally in the Civil Code, any person desiring to appropriate water, posted a notice at the point of intended diversion, stating the amount of water which he desired to appropriate, a copy of which notice was recorded in the office of the Recorder of the county in which it was posted. The water flowing in the stream may already have been appropriated to its full extent. That made no difference. The notice could specify any amount to be diverted, even though such amount exceeded the natural flow of the stream. The claim so posted disregarded all prior existing rights. It might be impossible to use the water claimed for a beneficial use, but if the notice stated that such water was to be so used, the notice was prima facie valid. The provision which required a copy of this notice to be recorded was absurd. Nearly, if not all, of the streams flowed through more than one county and there was no single record which could be referred to for evidences of title. The statute required the appropriator to commence work within sixty days after posting of the notice and to pursue the work with reasonable diligence until completed; but there was no method provided for proving of record, whether the work was diligently or at all prosecuted to completion.

## THE RESULTING LITIGATION.

The statutes in question have been the foundation of some of the large fortunes of this State, but these fortunes are held exclusively by the attorneys of record of the misguided individuals who availed themselves of the privilege granted by these statutes. Numerous cases arose promptly between those who appropriated water under these statutes and riparian owners, but since the decision of our Supreme Court in Lux vs. Haggin, in 1886, a large crop of lawsuits (well irrigated, of course) have arisen between conflicting appropriators. On account of the strict rules of procedure, our courts have been entirely inadequate to cope with the questions involved. The judgment of a court can only bind the parties to an action, and it frequently occurs that two ditch companies conduct a protracted litigation as the only parties thereto, with the attorneys of many other rival claimants present in the courtroom to ascertain what lawsuit can next be brought by their respective clients.

## ABSURD JUDICIAL DECREES.

The defect of the present system can be readily seen from the following example drawn from my own experience:

Ditch "A" sued Ditch "B" and upon the sworn evidence introduced obtained a decree giving it a priority of 20 cubic feet of water per second. Ditch "B" sued Ditch "C" with the same results, and Ditch "C" thereafter sued Ditch "A" with the same result, and there are still thirty-five ditches on the same river, the priority or inferiority of whose rights has not yet been determined. Yet in each case the court was bound to decide the issue between the two litigants upon the evidence presented to it. The three judgments referred to are not practically worth the cost of filing the complaint. One litigant told me that he had secured five injunctions against adverse appropriators, but that none of his injunctions had ever brought him a drop of water. Each litigant starts out with a prima facie case derived from his notice of location, yet a glance at the aggregate of these locations shows clearly the absurdity of any such method of acquiring title, as in every instance the aggregate of these locations exceeds the total supply of water in the stream. Up to 1900 the various county records disclosed the following claims:

| Location. | Miners' inches. |
|---|---|
| Honey Lake Basin | 28,630,000 |
| Cache Creek | 35,362,200 |
| Salinas River | 463,000 |
| San Joaquin River | 36,571,000 |
| Kings River | 37,500,000 |

How much actual water there is in these streams cannot be stated, but the absurdity of the "claims" may be seen by the fact that in the aggregate, allowing an average duty of five acres to one miner's inch, they call for water sufficient to give full irrigation to 672,631,000 acres of land, which is but little less than the entire land surface of continental United States (excluding Alaska), west of Nebraska and north of Texas, and probably more than the entire arable area west of the Mississippi.

The records of Nevada County show 358 claims posted on the Yuba River. Sierra County records show over 3,000 claims and the Yuba County records show 329 claims filed on the waters of the same river. Records like the above disclose the original source of title of most of the ditch companies of this State, and show the necessity of some legislation which will conclusively establish the validity and priority of these claims, most of which are ridiculous, all of which are more or less conflicting.

## EXISTING TITLES SHOULD BE SETTLED.

No system of administrative control over the waters of this State will be of any practical value unless we determine, once for all, the merits of all present claims. It would be useless to attempt to reform the present system by amendment. Patch work will not do. The system in vogue during the last thirty-two years has been so radically wrong that our only hope is to settle such wrongs by some sweeping method and start again on some method which the experience of other countries may teach us to be a proper one.

## BULLETIN NO. 100.

I mention all these defects in our present irrigation laws for the reason that no administrative system of distributing the water of this State can be of any value unless it can be applied, not only to such water rights as may be hereafter acquired, but also to existing water rights, and no administrative system can be made to apply to existing water rights unless such rights be definitely and permanently settled. These facts and the conclusion which I have drawn from them are not new. They were called to the attention of the public at large in 1901 by the Agricultural Department in its Bulletin No. 100, which should be made a textbook in the public schools of this State. Elwood Mead, assisted by a force of eight of the most prominent engineers, after a year of close investigation, recommended that the administration of water be vested in a board of control, to consist of one business man, one civil engineer and one attorney, to hold office until removed for cause. They recommended that the priority and limitations of every existing right to water be fixed at once. That the volume of unused or unappropriated waters be determined and that thereafter the administration of the waters of the State be vested in this board of control, with such competent assistants and with such division of the State into administrative divisions or districts that might be found proper. It was supposed that the publication of this report would bring forth, immediately, a large number of plans devised for the purpose of carrying out these recommendations, but the public at large treated the report with an apathy, which, I am very sorry to say, is a very prevalent disease in this State, and waited for plans to develop themselves, relying, I presume, upon the old fallacy that "the land of sunshine, fruit and flowers" will produce anything without labor.

## AN ADMINISTRATIVE SYSTEM NEEDED.

Those of us who have appreciated for years the inefficiency of the courts in dealing with irrigation questions, are anxious that a fair trial should be given to the recommendation of these engineers. There are some of us who hope to live to see the day when it will be a crime for a private individual to touch a headgate. We will always have to recognize the fact that no matter what legislation be enacted, the courts will always exercise some control over any administrative system which we may adopt. But the courts will only exercise this control in the event that the administrative body abuses the powers and privileges granted to it. While the courts recognize the executive branch of the Government as a co-ordinate branch, they still retain the power to correct abuses, although they invariably decline to substitute their own judgment for that of the body, the actions of which they are reviewing.

The great advantages of the administrative system are:

First: The expert knowledge of the officer;

Second: His right to make a personal examination of the subject-matter of dispute; and

Third: The summary manner in which he may prevent or punish for breaches of the rules and regulations of his department.

Take a particular example as illustrative of the superior efficiency of an administrative system over a judicial system in determining these questions. I personally know of a lawsuit in which the court found that the plaintiff was entitled to a prior right of 20 cubic feet of water. The decision of this court being based upon the preponderance of evidence submitted to it was correct, but an expert district engineer upon personally examining the premises would have ascertained positively that the ditch of the successful claimant could not by any possibility carry more than eight cubic feet. Yet under our present system the plaintiff in that action stands, by a judicial decree, with a record title of more than twice the volume of water which it can actually carry in its ditch and apply to a beneficial use.

## THE WATER LAWS OF OTHER COUNTRIES.

We are quite accustomed to administrative officials representing the public in its dealings with individuals, as the Police, the Harbor Commissioners, Normal School Boards and the Boards of Managers of the various State hospitals. Administrative bodies, however, having authority to intervene in disputes between man and man, or having any discretionary authority by which private parties are directly affected, and organized society only indirectly affected, are far less familiar to us. They are, however, common enough in older countries, whose primitive governments were despotic and whose people are accustomed to look to and accept official leadership. Most countries where irrigation is extensively practiced have administrative systems, whose officials not only act for the State where it is directly concerned, but which also, in the interest of the State, effectively concern themselves with disputes between individuals. With such officials in charge most disputes between private individuals can be determined by moral suasion. An official order is rarely issued. The power to issue such an order produces the desired effect. A brief statement of the duties discharged by administrative bodies in connection with irrigation in some foreign countries and other States may be interesting.

EGYPT: In Egypt all official action in regard to irrigation is administrative. The inspector of the district grants "permits" for taking out water, distributing it as he deems just. This official has police powers and can summarily arrest those who violate the regulations of his department. The irrigator deeming himself aggrieved, must appeal to the Governor of the province, another administrative officer, for redress. In cases of gross maladministration, the Minister of Public Works may intervene. There is no litigation between irrigators. The general regulations under which the administrative officers operate are set forth in decrees prepared by the Minister of Public Works and issued in the name of the Khedive.

See Bulletin No. 130, Office of Experiment Station, United States Department of Agriculture.

INDIA: Regulations in regard to irrigation are made by the Viceroy in Council. The Government builds the canals, which are administered by a staff of civil servants of various grades, who have absolute control of the distribution of water in accordance with general rules intended to be entirely just as between man and man. As in the case of Egypt, appeals are allowed to higher administrative authority, but there does not seem to be any method in which alleged grievances can be taken into court.

A member of my profession, expert in water litigation, would starve in these two countries.

CANADA: Canada had no irrigation law until the passage of the Northwest Irrigation Act in 1894 and 1895. This act was based upon certain definite principles, namely: that the water was the property of the Crown; that it could be obtained for beneficial uses only upon compliance with the provisions of the law;

that holders of water rights should have the protection and assistance of permanent government officials in the exercise of their rights, and that all disputes or complaints should be settled by administrative officers of the Government, their decisions to be final and without appeal. Under this law the right of the irrigator is strictly a license. The administrative officer determines the amount necessary for beneficial uses and limits the license to this amount, and the right so granted becomes appurtenant to the land described therein. All disputes between holders of licenses are settled by Government officials without recourse to the courts.

ITALY: In Italy no stream may be diverted without a permit from the Government. Applications for permits are considered by a Special Commission, which has among its members a representative from the Department of Agriculture, Public Works and Treasury, and a representative from the War Department, whenever its interests are affected. This Commission can refuse a permit where the use to which the water is to be put is regarded as inferior to some other possible use. It can refuse a permit where there is no unappropriated water. It can refuse a permit for irrigation where the stream would interfere with the development of power which it is proposed to apply to the generation of electricity for the operation of State railroads. Priority is not established by the courts, but by a special commission appointed by the King to take the testimony and determine the rights to water on each stream. In taking such testimony the measurements of streams and the gauging of ditches is carried on by the Civil Engineering branch of the Board of Public Works. The duty of water, the areas of land irrigated, and like questions, are investigated by the Department of Agriculture. After rights are so established, the responsibility for their protection falls on the Engineering Corps of the Board of Public Works. In some instances the irrigators have combined all the canals into associations and hired an engineer of their own, who takes charge of the streams and regulates the amount of water used by the different ditches. There is a provision for an appeal to the court from the decision of the Special Commissions which determine rights, but such right of appeal is rarely exercised.

## WATER LAWS OF OTHER STATES.

In the States of Colorado, Wyoming, Nebraska, Idaho, Utah and Nevada, the active head of the administrative system is the State Engineer. In each of these States but Nevada, water divisions, each comprising a general drainage basin, are, or are to be, formed, these water divisions being further divided into water districts. Over each water district is an official who apportions the water in the streams among the different canals, according to their established rights, and over each water division is a general supervising official who, subject to the orders of the State Engineer, directs the work of the officials of his division.

More specifically, the chief duties and powers of these officials in the various States are as follows:

COLORADO: As head of the administrative system of the State, the State Engineer receives and files all claims to water, approves all designs for dams and reservoirs above certain sizes, supervises the division engineers and district water commissioners, determines the loss by seepage and evaporation when the main channel of a stream is used to convey water from reservoirs or different watersheds, directs the measurement of all water transferred from one watershed to another, may require all reservoirs and dams to be constructed to his satisfaction, and determines annually the amount of water that may be safely impounded in the reservoirs of the State. The State Engineer is appointed by the Governor. The division engineers supervise the work of the district water commissioners and the proper division of the water in their divisions between the several districts. The division engineers are appointed by the Governor from applicants who have satisfactorily passed an examination conducted by the State Engineer. The District Water Commissioners apportion the water between the ditches, having authority to make arrests if necessary to compel observance of established rights. The Water Commissioners are appointed by the Governor on recommendation of the boards of County Commissioners of the county or counties comprising the districts.

WYOMING: The State Engineer is President of the State Board of Control, which is composed, with him, of the superintendents of the four water divisions of the State, and the duties of which are to determine and adjudicate

all rights to water and to grant permits for its use. As administrative officer of the Board of Control, the State Engineer has supervision over the division superintendents, who in turn have supervision over the water commissioners of the various water districts, and these officers together control the appropriation, distribution and division of all the water of the State. No water can be legally appropriated in the State until authorized by the State Engineer, and then only if there is water unappropriated, and the State Engineer's office is made the place of record for all appropriations of water. The State Engineer has also general supervision over all reservoir construction within the State. The water commissioners have authority to prevent the waste of water and are vested with police powers to enforce priorities of right to water, as established by the State Board of Control or the courts. The State Engineer, division superintendents and water commissioners are appointed by the Governor, the latter on recommendation of the division Superintendents.

NEBRASKA: A State Board of Irrigation, composed of the Governor, the Attorney General and the Commissioner of Public Lands and Buildings, with the State Engineer as secretary and administrative officer, control the use of water for irrigation in Nebraska, passing on all claims to water and adjudicating all water titles. All claims to water must be filed with and passed on by this board. The State is divided into two water divisions, which are in turn divided into water districts, within which the water is distributed according to established priorities by assistant and under assistant secretaries, subject to the orders of the State Engineer. The State Engineer, under secretaries and under assistant secretaries are all elected by the State Board of Irrigation. The Nebraska law is based on, and is similar in its workings to, the Wyoming law.

IDAHO: By the law of 1903, control of irrigation in Idaho was vested in a State Board of Irrigation, composed of the State Engineer and the Water Commissioners of the three water divisions of the State. This Board of Irrigation makes rules and regulations governing the distribution of water in accordance with established priorities. The State Engineer passes on all applications to divert any of the waters of the State, and on the receipt of full evidence of use and order of priority, and of full compliance with the law, issues, without reference to the Board of Irrigation or other authority, and subject only to review by the courts, licenses confirming such use, this license showing all essential facts in relation to the use. The State Engineer and Water Commissioners are appointed by the Governor. The State Board of Irrigation designates the water districts, for each of which a water master is appointed by the Water Commissioner for the division in which the district is located. The duty of the water masters is to distribute the water to the ditches in accordance with established priorities.

UTAH: The officials charged with the administration of the irrigation laws of Utah are a State Engineer and Division Superintendents and District Water Supervisors, who are subject to the orders of the State Engineer. The District Supervisors are charged with apportioning water to the various ditches according to established priorities and under the direction of the Division Superintendent and the State Engineer. All applications to divert water must be approved by the State Engineer, and it is the duty of this official to collect testimony on which official decrees of water rights shall be made by the courts. The State Engineer has power to require all diverting works to be of a safe construction, to make all needed rules and regulations for the equitable apportionment of the water according to the respective rights of appropriators, to pass on all dams, to measure all streams, require measuring devices to be placed on all ditches, and otherwise to discharge the duties of his office.

NEVADA: The State Board of Irrigation, composed of the Governor, Attorney General, the Surveyor General and the State Engineer, administer the irrigation laws of Nevada, and of this board the State Engineer is the secretary and active member. This board has authority to divide the State into such water divisions or water districts as seem to be advisable, to appoint water commissioners to apportion the water among the irrigators, and to make rules and regulations for the proper and economical administration of the streams of the State. The chief duties of the State Engineer are to prepare for each stream in the State a list of the appropriations of water according to priority, giving essential facts regarding such appropriations, and to issue certificates of appropriations to each appropriator, stating the amount and priority number of his appropriation.

## CALIFORNIA ALONE HAS VIRTUAL ANARCHY.

From the above it will be observed that in the absence of a strong administrative system California stands alone among the irrigated countries of the world. And it may be safely assumed that in all countries other than those enumerated, whose irrigation laws are not available for the purposes of this paper, there are strong administrative systems which settle most disputes without the intervention of the courts. But in devising an administrative system for us, we cannot adopt some of the extreme measures resorted to in some of this legislation. For instance, the summary action of the administrative officers in Egypt and India in the exercise of police powers, would not be tolerated in this country. But a system of licenses or permits, the violation of the terms of which constitute a public offense to be prosecuted by the administrative officer in our courts, would be acceptable because it is reasonable. On the other hand, we must carefully protect the administrative officer from "government by injunction." To paralyze his functions or to virtually suspend them during years of litigation, would make an administrative system almost as inefficient as the judicial system under which we are now acting.

## THE WATER AND FOREST SOCIETY'S BILL.

In spite of the recommendations made by the engineers of the Agricultural Department in 1901, and in spite of the experience given us by the administrative system adopted in older countries, no plan has been presented for the State of California except that presented at the last session of the Legislature by a commission appointed under a resolution of the California Water and Forest Association. This commission was headed by Chief Justice Beatty, who, however, refrained from committing himself to a bill whose provisions he might be called upon to construe judicially. The Presidents of our two Universities were members of that commission, but they did not actively participate in framing the bill, but at nearly all the meetings of the commission they sent personal representatives. Mr. Elwood Mead, Chief of the Irrigation Service of the Department of Agriculture, and Mr. F. H. Newell, Chief Hydrographer of the Geological Survey, and Chief of the Reclamation Service under the National Irrigation Law, were also members of the commission, and were each present at one or two of its meetings. When absent each of them also sent personal representatives, Mr. Mead being represented by the late Professor J. M. Wilson and Mr. Newell by Mr. J. B. Lippincott, both holding responsible positions in their respective departments and both fully acquainted with the views of their chiefs. Two prominent members of the commission were the Hon. John D. Works, ex-Justice of the Supreme Court of this State, and Mr. Frank H. Short, of Fresno, both of whom are considered as most eminent authorities on irrigation law. The heads of the Engineering Departments of the two Universities, Professor C. D. Marx of Stanford and Professor Frank Soule of Berkeley, were constant attendants at the meetings of the commission, and with Messrs. Wilson and Lippincott represented on the commission the engineering knowledge and experience in practical irrigation.

The result of the season's work was a bill of eighty-five sections, which was approved and signed by every member of the committee except Judge Beatty, with the reservation that one of the attorneys had some doubt of the constitutionality of one or more provisions, although favoring them if they were constitutional. This bill made radical changes in our irrigation law. Its main feature was an administrative system worked out in great detail, and we do not understand that the constitutionality of this feature was questioned by any member of the commission. When introduced it was met with a storm of opposition, in which the character and motives of the members of the commission were violently assailed. On account of the opposition the bill was not pressed, as it endangered the success of another bill introduced by the Water and Forest Association, for which there was an immediate need. The bill was discussed at a public meeting held in Sacramento during a session of the last Legislature, such public meeting being called by a number of the civic associations of the State. It was curious to note that the opposition was headed by two distinct classes—those who owned water rights and those who thought that water rights should be taken away from those who owned them and given to the public.

To those of us who were present at this debate as spectators merely, it seemed clear that if the subject matter of the bill and the objections thereto were taken up calmly and with a sole desire to benefit the people of the State at large, unselfishly, and with a desire to protect vested interests, the bill could have been amended in such a way as to remove the opposition to it, and yet carry out the ultimate object of the framers, namely, to put in force an administrative system.

There was no time to do this before the adjournment of the Legislature, but it is not too late to make such an effort.

The bill proposed by the commission provided for a State Board of Engineers, consisting of a chief and three district Engineers, to be appointed by the Governor, with power to appoint and pay certain subordinate officials.

A system of fees for licenses and services was fixed, such fees to be applied toward the payment of the expenses of the system.

The Governor was to be an ex-officio member of the board.

Almost the entire Act after the first four sections was devoted to the duties of this Board of Engineers, and the manner and incidents of their execution. These duties were:

First. To ascertain and record the total amount of water flowing in all streams at different seasons, of course making use of existing official data.

Second. To ascertain and record all adjudicated claims upon such waters.

Tbird. To ascertain and record all claims not adjudicated.

Fourth. To determine the amount of water remaining unappropriated in each stream.

Fifth. To issue permits to divert and use water in all cases where title had become vested.

Sixth. To issue permits for new diversions wherever water remained unappropriated and available.

Seventh. To require verified reports from all persons claiming rights to water, such reports to give all the information which the board was required to record or possess in respect to such claims.

Eighth. To define the duty of water according to locality and soil, to be evidence of the amount necessarily used by appropriators.

Ninth. To define that portion of the year during which water should be supplied for irrigation from each stream.

Tenth. To regulate the extent and points of diversion.

Eleventh. To regulate from time to time the water rates which might be charged by licensees.

Twelfth. To regulate the manner in which water is to be supplied to persons entitled thereto, wbether continuously or at stated intervals, or both.

Thirteenth. To make all regulations necessary to carry out the provisions of the Act.

Fourteenth. To prosecute in the courts all persons guilty of violations of the Act, involving penalties, and to otherwise enforce the Act through the courts by such process as might be appropriate.

Fifteenth. To settle disputes between claimants of water, the decision of the board to stand until otherwise determined in a civil action.

## THE ACTION NOW PROPOSED.

You will readily see that these provisions are on the general lines of the irrigation laws of other countries and States. Remembering the grounds of opposition, as advanced at the Sacramento meeting, I would suggest for discussion that the plan of having the Board of Engineers determine in any way the validity, character and extent of vested rights, be eliminated, and that such determination be left to the courts, but through a procedure more simple and rapid than the system now available. Under our present system, I believe that the extent and priority of every water right on each stream can be determined in one action in the nature of a suit to quiet title; that as the State of California is the owner of all the water in each stream which has not yet been appropriated, the State may become the plaintiff in such action, although the decree may give the plaintiff nothing; that in such action every appropriator and riparian owner may be made a party defendant and may be compelled to interplead with each other, so that the respective rights of all of the parties may be determined by one decree.

The adoption of such a method is recommended in a draft of a State Irrigation Code, prepared for comment and criticism by Morris Bien, published in August of

this year. Mr. Bien is the legal adviser of the United State Geological Survey and a recognized authority. He prepared the draft at the request of the commission of Oregon and Washington, appointed to report such a statute. The great trouble with such a procedure is the expense and the fact that on many streams, particularly in Southern California, the respective rights have been determined in private litigation or by compromise agreement.

## THE STATE SHOULD BEAR THE COST OF SETTLING EXISTING RIGHTS.

In my opinion, the final determination of all vested water rights on all the streams of the State, is a question of such great public importance, as to justify the assumption by the State of all the expenses of the proposed litigation. To make the procedure efficient, the Attorney-General should be authorized to employ an additional deputy or deputies, and the attorney so employed, should have had a particular experience in water litigation. There are many such in this State. The salary paid to such Deputy Attorney General, should be liberal as the person employed must necessarily give up a valuable private practice.

The statute should autborize the Attorney-General to have an abstract of title prepared of all water rights appurtenant to any particular stream, and of all lands abutting thereon, in order that he may know from such abstract what parties should be made defendants and what the record discloses as to the title of each defendant. This abstract should be filed with the clerk of the court at the time of the filing of the complaint, and should thereafter be open to the inspection of all of the parties to the action.

## PLEADINGS IN WATER SUITS SHOULD BE SIMPLIFIED.

The existing statute sbould be amended so as to make the pleadings more simple than they are under our present system. No cross-complaint should be required from any defendant in order to secure affirmative relief against a co-defendant. To insist upon the present system of practice, would make the pleadings so cumbersome as to make the remedy inefficient. The statute should provide that each defendant by way of answer, and for the purpose of obtaining affirmative relief against any co-defendant, should set forth the origin and extent of his claim, specifying particularly the amount of water he applies to a beneficial use, and the period of time during which he has so applied it. By thus simplifying the procedure and by the usual process of publication of summons, and the filing of a lis pendens, all defendants would be before the Court and a judgment settling the respective rights between all the parties would, in my opinion, be binding. In one other important respect also the existing statute should be amended. The Court upon the filing of such a complaint, should be authorized to employ expert engineers to assist the Court in ascertaining particular physical facts which would naturally arise during such litigation. To such expert witnesses should be given the power to personally inspect the premises and report on physical conditions. By thus simplifying the procedure already existing and by a liberal appropriation bill which would meet the costs of such a proceeding, tbe final determination of all vested water rights should be reached within four or five years. Where the water rights on a stream have been already definitely determined by litigation or by agreement between the parties, tbe proposed action on behalf of the State would be a mere formality. The defendants having already settled their interests as between themselves, could promptly file answers to that effect and the decree in such a case would be entered by consent.

## WATER RECORDS SHOULD BE CONCENTRATED IN ONE OFFICE.

All decrees, whether entered by consent, or otherwise, could then be filed in the office of those having control of the administrative system which then could be made applicable without further contest. The object of these suggestions is that on account of the late date at which we desire to apply an administrative system, some method must be devised from which the administrative system can start. The bill recommended by the commission appointed by the California Water and Forest Association left the whole thing to tbe expert engineers. The bill suggested by Mr. Morris Bien left it to the courts. I strongly recommend the latter course, as one which will most please those now in possession of vested water rights. Upon the determination of these vested rights in either form, an administrative system can and should be applied. There is no constitutional objection to such administrative system, except that it may possibly deprive the courts of the jurisdiction vested in them by the constitution. If a system of determining vested rights by judicial

decree under a special procedure be adopted, there can he, in my opinion, no further ohjection to a purely administrative system of administering the water rights of this State.

When I was asked to write this paper, I was told that it was a part of my duty to submit for discussion a statement as to what could he done, and as to what could hest he done. I hope that I have fulfilled my duty. All of these questions are still novel and open to discussion, but from my long experience at the bar, and with considerahle experience both as client and attorney in water litigation, I feel that there is no suhject as important to the State of California as the one under discussion. The trouhle with the questions involved is, that there is no person or set of persons with any particular pecuniary interest in solving the question, which is purely a puhlic one. Those of us who have appreciated for years the importance of the question, are too busy to devote our whole time to it, and it certainly will take the whole time of a puhlic-spirited man in independent circumstances to bring such questions fairly before the public. If this club could push the solution of this question to a final determination, it could well be proud of its success and of its founders.

# Preliminary Report of the Section of Commercial Interests.

This paper having been referred to the Section of Commercial Interests, the chairman endeavored to get together such members of the club as were likely to be interested in the regulation of water rights in order to begin what is undoubtedly a very serious task, that of formulating the questions that naturally arise in the discussion of the subject of this paper and bringing them in such form before the club as will ultimately result in an expressed opinion by the club in some sense commensurate with the importance of the subject. It was decided at the first meeting that the following preliminary report should be made to this meeting of the club, reserving the final report until the Section should have had time to collect and arrange the necessary data. Vice-President Adams has furnished the Section with such data as it now possesses, and this preliminary report is based on information furnished by him.

1. We have assumed that the abstracts of the laws of other States and countries given in the paper by Mr. Thomas are correct, and that as a matter of fact, California stands practically alone among States using irrigation, in having no administrative system regulating and controlling the appropriation and distribution of water in its rivers and streams.

2. The following are the essential portions of the laws of California, referred to by Mr. Thomas in his opening paragraph as a "disgrace to any statute book":

**Act of April 17th, 1850.**—"The common law of England, so far as it is not repugnant to, or inconsistent with, the Constitution of the United States, or the Constitution or laws of the State of California, shall be the rule of decision in all the courts of this State."

**Civil Code, Sec. 1410,** says: "The right to the use of running waters in a river or stream, or down a canyon or ravine, may be acquired by appropriation."

**Sec. 1411.** "The appropriation must be for some useful or beneficial purpose, and when the appropriator, or his successors in interest, ceases to use it for such purpose, the right ceases."

**Sec. 1414** adds that "as between appropriators the first in time is the first in right."

**Sec. 1415.** A person desiring to appropriate water must post a notice, in writing, at a conspicuous place, at the point of intended diversion, stating therein, (1) that he claims the water there flowing to the extent of (giving the number) inches measured under a 4-inch pressure; (2) the purpose for which he claims it and the place of intended use; (3) the means by which he intends to divert it and the size of the flume, ditch, pipe or aqueduct in which he intends to divert it. A copy of the notice must, within ten days after it is posted, be recorded in the office of the recorder of the county in which it is posted."

All titles to waters from flowing streams or to its use, rest upon the paragraphs quoted above and proceeding with due diligence thereafter. And the task of reconciling the law of 1850 with the quoted sections of the Code and conditions as they actually exist in California has furnished work for one generation of judges and the job is one not likely to give out; as anyone can "file" on any amount of water flowing in any stream, the result has been an absurd overlapping of claim upon claim, each laying the foundation of a possible law suit.

Professor Elwood Mead in an official report stated that in 1900 there were found thirty-two consecutive claims to all the water in the San Joaquin River, and the aggregate of these claims represent moisture enough to submerge the

continent. The result has been endless litigations whose ruinous effect have long been recognized by irrigators and the members of the bar, and was first brought to the attention of the general public in a petition signed by a large number of business and professional men, also banking corporations (see Bulletin No. 100, Office of Experimental Stations, page 22), requesting the Secretary of Agriculture to detail Professor Elwood Mead to investigate irrigation affairs in this State. That petition says "Great sums have been lost in irrigation enterprises, still greater are the sums endangered, water titles are uncertain, litigation is appalling."

The result of that petition was an official investigation under the direction of Professor Elwood Mead, whose results are recorded in Bulletin No. 100 above referred to, a study of which, coupled with the discussion on the bill introduced as the result of it, at the session of the legislature in 1903 should be the foundation of any intelligent opinion upon the subject matter of the paper by Mr. Thomas. As to the uncertainty of water titles, and the volume of litigation there can be no question. (See abstract of the litigation on King's River, given in the Bulletin referred to, showing forty Superior Court decisions and orders, with litigation at that time as lively as ever.)

That this litigation is not decreasing is shown by a statement of Chief Justice Beatty, in a letter dated October 31st, 1904, in regard to the necessity of establishing Districts Courts of Appeal. In this letter the Chief Justice, in explaining why the seven Justices, with the assistance of five Court Commissioners, are still unable to keep up with the business, state that it is owing, "not only to the increased number of cases, but to the complexity and difficulty of the questions presented for solution. This is especially true of the large and increasing class of cases arising from disputed water rights," and we are not yet fairly started in water litigation north of Fresno County. As a matter of fact, no one can get any idea of our water laws by a study of the statutes. A code of water laws is being gradually built up out of court decisions which applies the common law of England to conditions in this State, and which may result in time in their being a common law of California for the regulation of water rights. Notwithstanding this deluge of litigation, it is the expressed opinion of Chief Justice Beatty, and an opinion from such a source is certainly entitled to great respect, that no water legislation is necessary or desirable in this State, and this opinion is strongly supported by what seems the almost unanimous opinion of water users in Southern California, who, having, as they believe, finally obtained adjudication of most of the flowing waters in that section of the State, and are well started in their quarrels over percolating waters, desire only to be let alone, to finish their battles in peace. Some of these gentlemen have promised this Section their assistance in formulating objections to the position taken by Mr. Thomas in his paper.

It is the desire of the Section, to whom this paper has been referred, to make such a study of the subject as will enable it to place before the club a compact statement of the essential facts bearing on this great problem, with the arguments for and against the administrative system for regulation and control of the water sources of the State, this statement to be such that its dicussion can be brought within the compass of time which the club can devote to it and the compass of space permissable in a number of our transactions, and simple enough for the ordinary man to read and understand. Such a report will involve a large amount of labor on those who are willing to undertake it and if well done will be very valuable and the kind of thing this club professes to do, and if divided among a number, it will be easy for all, and we request that the members

who are willing to undertake some definite part of this work and complete it within, say sixty days, send their names and that part of the work they will undertake, to the chairman of the Section.

In the meantime, we suggest that this meeting be given to a general discussion of the subject as we understand it now, this discussion to be a general review of the subject, but with special reference to this question:

"Should the State require the Attorney-General to bring suit to quiet title to all flowing water of the State, assuming all the legal expenses involved, so far as claimants desire?"

GEO. W. DICKIE, Chairman.

## Discussion by the Club.

MR. MILLS: I move that the report of the Section be adopted and that the discussion be limited to the question suggested. The present condition of water rights in this State is such as to be beyond legislative remedy, for the reason that any adequate legislative remedy would be contrary to the Constitution of this State and of the United States.

MR. MOODY: I would object to that limitation because it appears to me that it does not touch the question of the paper at all. The paper dealt particularly with the legislative measures that have been proposed and suggested finally that by easy changes in them this measure might be pushed through.

MR. MILLS: If that is not entirely clear I beg to withdraw my motion.

MR. ADAMS: The Section desires to get the impressions of the club generally so that we can have some suggestions for the information of the Section.

MR. SPRAGUE: Mr. Chairman: It is needless to say that I am in favor of the provisions of the paper as read. I think most of us are. It raises the question whether some kind of regulation can be secured or whether any changes can be made to affect the existing status of the irrigation laws. Briefly stated, these provisions contemplated in the paper are, first, the adjudication of existing water rights in order that we may have a beginning, and secondly, the administering of these water rights by the administrative body acting under expert advice that no opportunity for subsequent losses result therefrom. This course has proved successful in all cases where it has been applied. We are not the only community in such straits. Italy had her troubles and all the other countries, excepting the western territory where everything was new and they were able to get at the thing intelligently before vested rights accrued. What resources can we look to for the enactment of laws such as these to relieve us from the terrible litigation which stretches out before us? We cannot expect to secure the support of those large corporations that are now enjoying the advantages they have already secured. We shall have to counteract the indifference of the very large portion of the people not interested in irrigation at all. To offset this we shall have the support of those people who feel wronged by the existing status of water laws and there are legions of them. They realize the injustice. Communities I have lived in have been ruined with dissension because of these water laws. I suspect we shall have to get these laws passed by the non-irrigating portion of the community, because those who are already engaged in irrigation have certain ideas and it would be difficult to persuade them to open things anew. We need not antagonize interests where the rights have been finally determined by the courts. I suspect we shall have to appeal to the common sense of the great masses of the people, to our commercial organizations, our chambers of commerce and promotion committees because it deeply

concerns all of these. This litigation is a damage to the State because it is increasing year by year. This question will be harder and harder to settle every year. We can confidently count upon the support of the common sense of justice. When anything must be done, it can be done, and so we can finally get this great problem settled.

MR. WALCOTT: I am afraid that I approach this subject in a pessimistic spirit. I agree with Mr. Thomas that we have the worst system of water laws that the ingenuity of lawyers has been able to construct and I see no existing force gathering to overthrow it.

But it is essential for the development of California that these laws should be overturned and a system of ownership and regulation of water rights substituted in their place that will give certainty of ownership in water, and justice in its application.

The present uncertainty of water titles is forcing the ownership of water into the hands of rich men or big corporations that are strong enough to protect them—and the big corporations are using their ownership to get the greatest possible amount of profit out of the sale of water—not to secure the greatest possible fertility to the land. Yet the men who are profiting by these abuses have shown themselves much stronger than those who are suffering from them. Two years ago the Water and Forest Association went to the legislature with a bill to establish a system of water laws that is as near the perfection of absolute justice as is possible under the vested rights that have been permitted to accumulate. The men who profit by the present system of every man for himself and the devil take the hindmost were represented in force. The men who are suffering from the present injustices were scattered and silent The bill was taken into a dark corner and assassinated. It was not even discussed.

That is why I am pessimistic about any reform of our water laws. There is an old saying that "Who would be free, himself must strike the blow"—and if the water laws are to be reformed, the men who are suffering from bad laws must get together and work with as much spirit and resolution as those who are profiting from them.

The chief hope for better conditions lies in the fact that after all it is the State of California that is the chief sufferer. The government's great work on "Irrigation Investigations in California" shows that the San Joaquin Valley has 5,000,000 acres of irrigable land—more than are watered from the Nile where a population of 10,000,000 is supported, and 5,000,000 live by agriculture alone. It shows also that there are from 10,000,000 to 12,000,000 irrigable acres in the Sacramento Valley, with water enough to irrigate about 13,000,000 acres. Yet in the two great basins of the San Joaquin and the Sacramento the census of 1900 could find only 191,901 inhabitants—and most of these lived in cities.

Judged by the standards set by the valleys of the Nile and of the Po and by such irrigated lands in our own State as those about Riverside, the central basin of California is capable of supporting more than 10,000,000 people in the American standard of comfort. Yet we have here less than 200,000.

We do not always realize the great capacities that lie about us. We may remember vaguely that California has a larger area than Japan, with its 45,000,000 people, and think that Japan can support this great population because of the simplicity of living in that land. But we should remember also that this State has 50,000 more square miles than Italy with her 30,000,000 inhabitants, and 25,000 more square miles than Prussia with her 32,000,000. We have better soil, and a greater range of production than either of these countries.

But to secure any such development as these figures foreshadow, there must be certainty and justice in the distribution of water. So I say that it is the State of California that is being most injured by the denial of justice found under the present laws, and it is our duty as citizens to bring what pressure we can to have them amended. They will not be bettered until the pressure upon the legislature for amendment overcomes the pressure of those who are making their profit out of the unjust conditions that now hold back our progress.

MR. ADAMS: As circumstances have made me more familiar with this subject than with most others which the club is likely to discuss, I can perhaps make best use of my five minutes in this preliminary discussion by directing my remarks to the nature of this question and the necessary procedure if the club is to do any useful work upon it.

The essential facts as to the condition of our water laws and the results obtained under them are assembled in Bulletin No. 100 of the office of Experiment Stations, U. S. Department of Agriculture. That document contains reports on nine typical streams in the State and may doubtless be accepted as disclosing conditions throughout the State as they existed in 1900. I do not think that anyone ought to attempt to discuss that paper of Mr. Thomas, who is not acquainted with the facts set forth in that Bullettin. The investigations and their publication cost not less than $25,000, of which more than half, if I remember, was contributed by citizens of this State. No use justifying such expenditure has been made of the document. It is in our libraries and copies can be obtained of our Senators or of the Secretary of Agriculture.

As the result of the investigations a bill for establishing a State administrative irrigation system was introduced in the last legislature and one essential part of a study of the subject is the reception recorded to the bill by the irrigating public and the history of its brief journey to an untimely end. Much of it was discreditable to those concerned, and was the result of demagogy in arousing prejudice by untruths, cowardice on the part of some who had signed or promoted the bill, but who fell down before the popular outcry, personal hatred in at least one case, and above all, in the fact that there was not one member of the legislature with the intellectual ability and public spirit to grasp the real issues involved and force a public discussion in either House on the merits of the essential clauses of the bill.

This history is not only instructive, but essential if the club is to perform useful service, because, while as philosophers, it is proper that we form our ideals, as statesmen we must consider what is possible in a world of selfish, pigheaded people. I have collected and arranged the data for this study, which are at the disposal of the Sectiton. From the material available it will be possible to evolve a brief statement covering not more than three or four pages of our transactions and which shall contain a statement of the essential points of difference between those who advocate and those who oppose a State administrative system, with a summary of their reasons. This must of necessity be done by one person, for two would muddle it all up. The labor is in segregating the true and essential from the untrue and non-essential and reducing the resulting material to such a compact statement as can be readily grasped by the ordinary human mind. If I were in a position to undertake this study for the Section, which I am not, I imagine that with previous knowledge of the subject, I could do it in the evenings of one week. One with less knoweldge and no smarter, would require more time. But it will have to be done if this club is to have any discussion of the subject which will correspond with the proposed ideals of the club, and be of any service to the commonwealth.

There has been superficial discussion enough. Without this condensation of the material, and more information than we now have of the actual workings of administrative systems in the States of this Union which have them, any discussion in the club would be superficial, waste itself in details, wander everywhere and lead nowhere. Whenever we attack the subject in a fruitful way I have the promise of those most active in opposing the bill of two years ago to prepare for us the strongest argument which they can make in opposition to any administrative system whatever. With all this information and argument and the final report of the Section thereon, this club can take up the subject and deal with it, not only intelligently, but in a manner which will justify its name and its professions. With some hard work from one or two and a less amount from several more, the subject ought to be properly prepared within two or three months.

MR. GALLOWAY: In the reading of this paper at a former meeting one point struck me which made me offer myself as a speaker. Apparently this question is treated solely from the standpoint or irrigation. While this is a large and growing subject in the State of California, it is not the only one. The use of water for power is one of equal importance. Any solution of the question involves the question of water use for power as well as for irrigation. The paper upon this subject, I am free to admit, did not seem to me successful in any way in pointing out difficulties. It seems to me that the paper of Mr. Thomas dealt largely in statements which are hardly susceptible of proof. For instance, he states in his opening paragraph:

"In 1872 the State of California adopted a method of appropriating the running waters of the State, which is a disgrace to any statute book. A few years' trial must have shown the utter absurdity of the method adopted, and those of us who came to the State at a later date cannot understand why this grossly defective method should have been permitted to stand upon the statute books. The explanation probably is that the bar of the State was delighted to find such a fruitful source of income, and that the attention of the general public was not called to these defects until the publication of Bulletin No. 100 of the Agricultural Department of the United States."

To my mind that is wrong and the statement is incorrect. I do not believe that the bar of the State is in that condition. Later on he gives statements of the amounts of water appropriated from various streams of the State. It seems to me that such statements do not carry proof. The same method might be used by the assessor of a city to find out the value of a lot from the time of Jesus Christ and add them togeher to get the value of the lot. It was these points that lead me to offer myself as one of the speakers. Any administrative system will find itself in extreme difficulties, difficulties which to my mind are greater than those now presented. I might be led possibly to revise my opinion on this subject by later study. The tendency of the argument seems to me to be socialistic—that paramount to all things is the right of the people. But certain vested rights exist and they cannot be ignored. The writer states he hopes to see the day when no headgate in California can be operated by a private person or corporation. Say a corporation had a million dollars invested. Do you suppose such a corporation would tamely sumbit to have its regulation of water attended to by some administrative system of the State?

MR. CHAMBERLAIN: The present psychological condition of the water claimant in this State reminds me forcibly of a man in the dark. The bravest of us, the coolest of us, fears any sound he hears after the lights are out. A cat in

the next room may be a burglar. The step around the corner may herald the approach of a footpad, or it may be only a policeman, but as soon as we hear it we feel instinctively for our hip pocket, if we are ready for battle, or, if not, we draw into the shadow and keep watch.

Everyone we meet in the dark, as on the desert, is an enemy. So it is in the dense legal obscurity which surrounds the water user. Anybody who talks even of trying to get water from any source is considered by every other claimant thereon as one who threatens his own existence, though the newcomer may be a sincere friend anxious only, by the diversion of flood water, to relieve the nervous riparianist of the necessity of leveeing to protect his crop from overflow.

Last year, a dry season in the region, Kings County people estimate that the floods in the Tulare Lake bed kept $500,000 out of the county; figuring the value of the crops actually ruined and the land submerged, and therefore not cultivated, which would have produced one of those 30 to 50-sack yields, for which the lake bottom is famous. In addition, much damage was done along the course of the river, and yet riparianists and ditch owners talk of nothing but injunctions and law suits when a new company proposes to run some of that devastating current on to dry lands where it will add to, instead of taking from, the wealth of the community.

The city of Santa Barbara is now building a series of works to store flood waters in the mountains behind the town for the use of the Montecito and Santa Barbara Valleys, and there is a spirit of unrest among the lower owners who do not know what this new work will mean to them. No one familiar with the Southern California conditions will deny the great need for storage reservoirs in that rich land, if irrigation is ever to be developed to its utmost, but what riparianist or appropriator could view with equanimity the prospect of a new claimant, even for flood water, on one of their much appropriated streams.

Los Angeles will probably have to resort to a great storage dam if her disastrous suit against the residents of San Fernando Valley is not pushed, and we are all familiar with the dispute between city and county over the Tuolumne Meadows plan for supplying our own city with water.

Courts have not been idle in their attempts to bring light into this legal darkness, but the results do not encourage "those who put their trust" in judges. The number of suits which have been decided gives only a faint idea of the real number filed in the Superior Courts, but that there are decisions that do not decide is shown more clearly by the state of things in Kings River, where for twenty years a perfect deluge of complaints and injunctions has washed away whatever of sand the boldest water user had, and now Mr. Grunsky says in his reports in Bulletin No. 100 that probably no one claimant on that river knows his rights as against the world. I can from my own knowledge say that this remark is just. The agreements are numerous and little more decisive. Contracts and judgments may be effective in Southern California in the small streams confined in one county and where it is physically easy to get the water users together or into one court for a final settlement of their whole trouble; but their utter futility in the San Joaquin and Sacramento Valleys is amply proved in practice.

MR. MILLS: The appropriation of water confirms no right whatever to water. It is only the necessary preliminary. The trouble has been that the appropriation has been made for a large quantity, and a partial use made to hold the entire appropriation. The law did not define the exigencies of the case quite

clearly. A man begins by using 1,000 inches and later on 2,000 inches, but his appropriation of 10,000 inches was claimed to hold. I believe that a board of engineers should be appointed who should have the power to depose anyone who was holding water out of use. When that provision went into the bill, all the irrigation systems in California pulled against it. The quantity of water to irrigate a fruit orchard is constantly increasing. The water in the ground is disappearing.

MR. MOODY: There seems to be some doubt about the real reason for the defeat of the bill. The bill was obtained by an application of the referendum system. Some of you will remember that at the Sacramento convention, called by San Francisco parties, on the floor of the convention there was not a vote taken because the supporters of the bill did not want it taken. I would like to have Mr. Smythe of San Diego, who is a member of this club, address this club when this question is taken up again.

The matter was then referred back to the Section of Commercial Interests. Subsequently a new Section—the Section of Public Laws—was created, which took over the consideration of this subject, and at the meeting held on June 13th, 1905, presented the following

## Report of the Section of Public Laws.

The Section of Public Laws, having considered the paper of William Thomas entitled "The Regulation of Water Rights in California," report that they find all statements of fact therein contained to be substantially correct, and from that paper and other sources we report as follows:

1. The method prescribed by California law for acquiring title, or color of title, to water, or the use of it, is the cause of endless litigation.

2. California has absolutely no State administrative system for assuming the equitable distribution of water in accordance with the rights of each user and the public, in which respect it differs from all countries outside of the United States where irrigation is an important factor, and from most of the States of this Union.

3. Titles to water, or the use of it, have been commonly determined in California courts in suits between minorities of claimants or users of water from a common source, to which the State and all other users have not been parties, with the result that decrees often have been, and future decrees are likely to be, made that do not finally determine the rights in litigation, although much time and money have been wasted in the vain effort. The mere cost of litigation alone has been an enormous drain on the resources of the land owners.

4. The public, which is always interested in water suits, has seldom, or never, been represented at the trial of such actions.

5. Consequently few water suits in this State have ever settled any issues in such a way that they cannot again be raised, and few titles to the use of water are beyond question.

6. There is enormous waste of water on many irrigation systems, which cannot be prevented under existing law.

7. The irrigation law of California cannot be ascertained by a study of the statutes, but must be sought in a long series of decisions in which the Supreme Court has endeavored, according to the lights of its changing membership, to reconcile the irrepressible conflict between the common-law doctrine of riparian rights and the actual needs of irrigationists in California whose rights are not riparian. The law has been, and is, in a state of flux, and is decided by the logic of Judges rather than by the statutes of the Legislature. Few know what it is to-day; none know what it may become to-morrow.

8. There is not in existence any reliable record of legal titles to the use of water. County records show "claims" which may or may not be valid, and adjudications within the county, but nowhere are the records of river systems (which usually run through more than one county) concentrated.

9. The history of the use of the water of each stream is a history of ruinous litigation invariably beginning as soon as the demands on the supply become too great for the needs of all claimants.

10. When the claims on surface streams have been fought to a finish, litigation over the waters of underground streams begins. When underground streams cannot be located, litigation begins over percolating waters.

11. Litigation is not diminishing, but, on the contrary, is increasing, as stated by Chief Justice Beatty, in a letter published in 1904, in which he mentioned the increase of water litigation as one important reason for establishing district courts of appeal, to relieve the Supreme Court.

12. In Southern California the right to the use of surface waters has been fought out and fairly well settled as between individual claimants, and litigation over underground waters is well started. There are still remaining public interests in water now wasted, either in preventible seepage or excessive irrigation.

13. In the upper San Joaquin valley litigation over surface waters is still in full activity, and litigation over underground waters has hardly begun.

14. North of Fresno, in spite of innumerable lawsuits, litigation has hardly begun. If nothing is done there will be far more litigation in the North than there ever was in the South.

15. The Section endorses the following paper prepared by Charles Wesley Reed, and incorporates it in this report:

## WATER CONDITIONS IN CALIFORNIA AND THEIR REMEDY.

The most important stream in California, from an irrigation standpoint, is King's River. The wonderful county of Fresno is absolutely dependent upon the waters of King's River for its prosperity. There the results of irrigation are better realized than in any other part of Northern California.

Taking its rise in the eternal snows of the high Sierras, independent of the scanty rainfall that characterizes the precipitation of moisture on its fertile delta, King's River debouches on the plains of the San Joaquin valley, to bring wealth and prosperity to the great raisin district of America.

Not less than twenty-eight canals and ditches catch up the crystal waters of this mountain stream, and distribute them over the rich, but thirsty, lands of Fresno county. In the beginning of the irrigation season the river has over 4,000 cubic feet per second of water, the combined capacity of these twenty-eight canals, while in the summer stage it falls as low as 145 cubic feet per second. The canals carry water in the beginning of the season to their full capacity, and then go dry,

one after another, in the order of their rights to water, determined by priority of appropriation and use, and success in lawing in the courts.

While the waters of King's River have brought great wealth to the neighboring lands, they have been fertile in lawsuits as well. It is estimated that $40,000 a year has been expended by the water companies in controversies over this one river, with much increase of bitterness and bad feeling, but no increase in water supply.

J. B. Lippincott, in his paper on the storage of waters on King's River, California, No. 58 of the Water Supply and Irrigation papers of the United States Geological Survey, says that the lands in Fresno without water are worth about $10 per acre, and with a water right, but otherwise unimproved, are worth $60 an acre (pages 12 and 15). Such lands, put into vineyards, orchards and orange groves, are worth from $100 to $500 per acre. The total number of acres of land covered by irrigation canals is about four hundred thousand, (No. 58,W. S. and I. papers, page 12), and there are hundreds of thousands of acres of even better land that can never be utilized, because there is not enough water to go around. Mr. Lippincott, however, has devised a plan to make two hundred thousand acres of this land, outside of the present canals, available for the highest culture by supplying them with sufficient water. (Id. p. 97.)

Lying five or six miles to the south of where King's River enters the San Joaquin valley is Clark's valley, the only large natural reservoir site on King's River. It seems as if created for the single purpose of conserving the waste waters of King's River, for its total capacity is just about that of the water lost annually in the winter and spring floods. If Pine Flat reservoir, an auxiliary to the Clark's valley reservoir, were utilized, the latter would be filled each year, and two hundred thousand acres of land, far richer than the average lands of Fresno county, would be brought under irrigation. Mr. Lippincott says: "Probably the most valuable areas in Fresno and Tulare counties are the foothill lands, upon which citrus fruits can be grown between the three hundred and six hundred foot contours of elevation. These lands are without water rights, and can be irrigated from the reservoir described herein." (Id. p. 98.) By combining pumping plants run by electricity generated in the mountains by the same stream, Lippincott would add another hundred thousand acres of land to the irrigable area of Fresno and Tulare counties. (Id. p. 96.) The increase in the annual production of those counties would be not less than fifteen millions of dollars.

The total cost of distributing this water runs from 92 cents to $1.43 per acre annually (Id. p. 96), and the total cost of all these works would be about $20 per acre. For six million dollars, Fresno County could almost be duplicated and the two hundred thousand new acres would be as valuable as the three hundred and eighty odd thousand acres now irrigated, because the lands first irrigated were not the best lands. I have heard men say that Church first let the waters of King's River onto the plains of Fresno by simply plowing furrows in the bank of the river at an opportune place. Much of this irrigated land is poor, with hardpan near the surface, or steeped in alkali. But this unused land near the foothills, is wonderfully fertile, free from alkali, and most fortunately situated for protection against the frosts of spring, and the winds and heat of summer. The dream of all irrigationists that have investigated the question, is to save the flood waters of the King's River, by constructing the Clark's valley reservoir. There are many practical men in Fresno who believe that it would increase the products of Fresno county by one-half. Many of our most progressive citizens have made strenuous efforts to have that dream realized. Why is it not a reality? Why have not these two hundred thousand acres been added to the active

farming interests of California? Every twenty acres can support a family; one hundred thousand people can be supported upon this potentially fertile, but now dry, and most of the time barren, principality. The main reason is the uncertainties of water rights and the certainty of water litigation to the man or company of men who would attempt, under the laws of California, to impound the waters of King's River. They would make the desert blossom with alfalfa and vineyards, with orchards and orange groves, but they would certainly be confronted by costly litigation; injunctions might rob them of their water supply, might delay their works, might cause numerous unforeseen difficulties—in a word, might bankrupt the enterprise.

I have thought that a discussion of a project of this magnitude, practicality and beneficial character, would bring home forcibly to my hearers the unwisdom of our present water laws, and the necessity of a change therein. Suppose that we had a company organized with a capital of four million dollars, which are Lippincott's figures for the entire cost of the construction of the dams, tunnels, canals, rights of way, etc., necessary to impound the waste waters of Kings River in the Clarks Valley Reservoir ($2,206,822, and its auxiliary, Piue Flat Reservoir, $1,750,000. (Id. p. 96.) Suppose the money spent, and the works constructed, and everything ready to catch the first gallon of water running to waste past the intake conduit. The first thing to happen would surely be the serving upon the officers of the company of twenty-eight orders to show cause why the company should not be perpetually enjoined from diverting the waters of Kings River, to the great and irreparable damage of each one of the several prior users of water on that stream.

Imagine the feelings of men who are willing to spend millions of dollars to create a principality of two hundred thousand acres of the most fertile land in the world, when confronted by such a batch of lawsuits. It would take years to try them, at a cost of vast sums of money, and there is no known way of combining their issues so that the judgment in oue suit would bind anybody but the immediate parties thereto. It is necessary to realize the bitterness and feuds attending these water lawsuits to appreciate the difficulty of a settlement of the water rights on any important stream in California. Men have stood guard over their water gates with shotguns and rifles; they must get water, or their lands will be ruined. Dynamite placed under the dams would not be an unlikely contingency in the case of landowners who might conceive that their rights were being invaded.

All such trouble would be obviated were the rights of each user of water ascertained, and the amount of water that he used measured by competent administrative authority.

The Clarks Valley Company would have many difficulties to face. They would have to prove that water is going to waste and that vested rights to the use of water would not be impaired. Their troubles would be many.

## TROUBLES OF CLARKS VALLEY RESERVOIR COMPANY.

First. There is no way of ascertaining who has the right to use the waters of Kings River. The filings on water cannot be ascertained from the point of deviation, nor by an investigation of the Recorders' offices of the county seat of either Fresno or Tulare. These records are the basis of claims to water, but give no information to a company seeking to know how much water is still unused. As a matter of fact, the entire water of Kings River has been appropriated over and over again, according to the laws of California.

What is needed at present is the measurement of the water of all the streams of the State by competent administrative authority. When once the

amount of water used by the owners of vested rights in Kings River is ascertained, and when the amount of water that is wasted is ascertained, and the amount of water that should be used on each acre is demonstrated, and the amount of water that goes to waste annually in the winter and spring floods is ascertained, we will have collected a body of data that will be highly educative in character and upon which any reform of the water laws must be based.

Second. The suits that have been instituted in the Superior Courts to establish water rights do not bind the State nor any one not a party to the action. This intolerable situation would be remedied if all rights to use water were established by the judgment of courts of competent jurisdiction. The Attorney General should be instructed to institute a suit in the name of the people, in which all users of water on Kings River should be necessary parties. The object of the suit should be to define the vested rights of the present users of water and the right of the State to all water habitually wasted, or which is lost in the floods.

The great difficulty in handling this water question comes in right here. The owners of present vested rights are afraid of any litigation; what they have now they think they understand. They are powerful enough to prevent the passage of any law that they oppose. They are not interested particularly in the development of other lands than their own, or in checking the waste on any stream in the State, particularly on their own, unless they happen to be the latest claimants. The more entrenched a man is in his vested rights because of prior use and appropriation, the more opposed he is to any restriction on the use of water or any attempt to prevent waste because he thinks that the right to waste water is inherent in the right to use water. In my opinion, it would be wiser, as a practical measure, to delay the attempt to establish an ideal administrative system until the amount of water being beneficially used has been measured by authority of the State. All the opponents of an administrative system would be in favor of measuring the water that is at present used, as well as the amount of water that is wasted by misuse, and that which is not used at all by reason of being lost in floods. I am convinced from reading the speeches in opposition to the Works Bill that was introduced in the Legislature three years ago that no bill which attempts at once to establish a complete system for the State can pass the Legislature. It will be misunderstood by honest opponents and it will be misrepresented, as the Water and Forest Bill was misrepresented, by those who desire to beat it by fair means or foul. The first step towards any reform of the water laws must be based upon the measurement of all water now used in the State. That itself will be a great reform, but it will be one which will be unanimously supported. When all the physical facts concerning the irrigation water of the State have been established by competent authority, then the proper legislation for the control of the water of the State will follow as a matter of course.

William the Conqueror found the titles to the lands of his kingdom in almost as great a state of confusion as we find the titles to water in California. The King left an imperishable monument to his statesmanship by ordering " a general survey of all the lands in his kingdom; their extent in each district; their proprietors, tenures, value; the quantity of meadow, pasture, wood and arable land which they contained; and in some counties the number of tenants, cottagers and slaves of all denominations, who lived upon them. He appointed Commissioners for the purpose, who entered every particular in their registers by the verdict of juries; and after a labor of six years (for the work was long finishing), brought him an exact account of all the landed property of the kingdom. This monument, called Domesday Book, the most valuable piece of antiquity possessed by any nation, is still preserved in the Exchequer." (Hume, History of England, Vol. I, p. 147).

What we need in California is a Domesday Book of water properties; we

need to know the extent of water rights in each district, the quantity of water on each stream, and the number of users of water, of all kinds, and the quantity of unused water, and the quantity of water wasted by improvident irrigationists. We want vested rights defined and irreconciliable claims decided by the verdict of courts and juries.

Third. There is enormous waste of water. The endeavor is made to keep all the twenty-eight canals on Kings River full at their intake, whether the water is all used or not. Sometimes nearly as much water goes out the tailgate of a canal as goes in at the intake. I know of one canal which has taken 400 cubic feet of water per second out of the river, conveyed it through the land which it is supposed to irrigate, and out again, without one-tenth of it being utilized, and this, too, at a time when farmers on other systems were clamoring for the same water. I have personally seen water which I estimated to be 3000 gallons per minute turned into a seventy-acre vineyard in the Alta Irrigation District for the better part of three weeks. This was a common practice, which resulted, of course, in great injury to the land and not any good to the vines in comparison with two or three light irrigations a few weeks apart.

It is doubtful if the waste of water can ever be completely remedied by law, but a proper understanding of the use of water, and especially of the harm to land by over-irrigation, will do much to remedy this evil. An administrative system is needed to bring pressure to bear to prevent this waste of water. Its officers could diffuse the necessary information; they could take it upon themselves to prove the benefits which accure from the wise application of water, and so prevent its inordinate use for irrigation purposes.

Fourth. The right of eminent domain must be evoked at some time to remedy one of the wrongs of the present system. When the people recognize that it is the State's highest interest to see that every acre of good land is properly irrigated, it will also be acknowledged that abundant water should not be applied to poor, hardpan, adobe or alkali lands, when there is an equal amount of the best land in the country lying unused for lack of water. The Government is spending a great sum of money in attempting to drain the alkali off of lands near Fresno City that have become nearly worthless; upon the payment of proper compensation such lands ought to go out of commission, and the water which is nearly useless when applied to them, should be attached to the fertile lands that are begging, as it were, for water.

Fifth. The doctrine of riparian ownership is a knotty problem for anyone to solve when it is sought to take the water of a stream out of its bed on to lands not contiguous to its banks. It contemplates that an owner of land on a stream is entitled to the natural and usual flow of all its water past his property, whether he uses it or not. So long as he owns a few feet of river bank he is entitled to an injunction to prevent a great enterprise like the Clarks Valley Reservoir from being accomplished, if the result would be a diminishing of the usual and natural flow of all the water of the river. This doctrine has been declared the law of California in early days; it has been modified to some extent, but it is yet a serious obstacle for those who propose to divert the waters of a stream for any purpose from its natural channel.

It seems to me to be plain that there are too many obstacles to be met to justify a company of private men in building the Clarks Valley Reservoir. If we had an administrative system which had, first, measured the water of Kings River, and, second, had defined all the present legal rights to use that water, and third, had absolute control of all the waste and flood waters, and could license the use of such water to particular lands, then the builders of the Clark's Valley Reservoir

system could know in advance how much water to count on, and would be justified in spending the money needed.

If the Government should build this reservoir, it would be necessary for it to buy in advance the 200,000 acres of tributary land. As soon as the Government commenced building the reservoir, all the lands lying under it, to the extent of 200,000 acres, would immediately jump from $10 an acre to $60 or $70 an acre in value. The Government would only be benefitting private property, and would not help to bring in emigrants, if it did not control the land to be irrigated.

Again, it is the unfortunate experience of the builders of irrigation enterprises that while they make the lands tributary to their canals valuable, still they cannot make the owners of the lands use water for irrigation. In the Alta Irrigation District half of the land pays a water tax, but does not use water. In Butte County the new canal that has just been completed nearly failed because 10,000 acres could not be subscribed out of 200,000 acres that will be benefitted by the canal. Land values jumped from $30 an acre to $60 and $70 an acre, but still the very men benefitted would not agree to irrigate their lands, nor would they sell them at a reasonable figure. If the United States Government could be induced to buy all the lands tributary to Clarks Valley Reservoir and then construct the irrigation works, it would do more practical good in a short time than can be attained by reclaiming the deserts of more sparsely settled territory. Here is a project of proportions large enough for the Government to consider that would result in building up a population as great as that of the State of Nevada, within the richest agricultural county of California. The only other hope that I can see for the completion of this great enterprise is the establishment of an administrative system by which all present water rights will be defined, and which will control all other waters, including waste and flood waters, not now beneficially used.

What we want to bring about in California is the ownership of the water by the owners of the land. President Harrison said on this subject: "Whoever controls the river practically owns the land it waters, no matter who has title to the land."

Our present water laws are forcing the ownership of water into the hands of rich corporations, who are striving to get the most money out of the sale of water, and not the most fertility to the land.

Our laws almost force the present owner of water rights into extreme hostility to new appropriators on his stream. He wants all the water for his own canal. He feels no obligation to help his neighbor to stay waste, or to irrigate at such a time as would allow the same stream to irrigate a greater area of land. Our water laws are framed upon the principle, "First come, first served, and the devil take the hindmost." The time is rapidly approaching when the people of the whole State will see that it is a vital matter to the State to make each drop of water do the utmost irrigation it is capable of. We must make each user of water feel that he is entitled to only such water as he beneficially uses. We must have an administrative system in harmony with the experience of other countries that have been free from our unhappy experiences, but as a practical problem in politics it is difficult of solution. I believe the wisest thing for us to do would be to advocate the establishment of a water bureau whose sole duties should be the determination of all physical facts, such as the flow of streams, the diversion of ditches, the areas irrigated, and the extent of beneficial use essential to any complete definition of rights. Such a body of knowledge would have the effect of lessening and correcting abuses. This project would not meet with the active opposition of all present owners of vested rights. On the contrary, the inviolability of those rights would be kept constantly in view. The last water bill was strongly opposed by the water corporations because it was represented as overturning vested rights to the use of water.

After the physical data had been collected, the next step would be the judicial establishment of rights at the instance of the Attorney General on the basis both of the physical data collected by the State Irrigation or Public Waters Department, and of the testimony regarding the time of use, offered in the courts, provided that in every proceeding to establish rights, the court shall consider every other right, both public and private, on the same stream.

When one turns to the question of a practical working method by which future rights to water for irrigation may be acquired under public supervision and subject to reasonable public control, he finds certain well-established principles that have been worked out, although not wholly put into effect, by the experience of some of the Western States, particularly Wyoming, Utah and Nebraska. Among these are (1) that no diversion from any public stream or water source should be made without specific authority from the public, and that, if for irrigation, such authority should be given for only so much water as is necessary for such irrigation; provided, that use alone, without specific authority from the public, shall in no wise establish a right; (2) that all grants to water shall be made with reference to particular tracts of land, to be legally described in each grant to water; that transfers of rights shall not be permitted to the injury of other legal users of water, and that no transfers shall be binding except when approved by public authority represented by a court or State irrigation administrative officer; (3) that no grant of right to a stream shall be made unless there is unappropriated water available in such stream to supply such grant, and (4) that all grants to water from public streams sball be subject to public control exercised by State administrative officers so organized that each independent stream shall be considered as a unit, and upon which each right shall be administered with reference to every other similarly granted right on the same stream.

In closing, I want to express my sense of obligation to Mr. Edward F. Adams, who has placed abundant material before me in preparing this paper. I am deeply indebted to his son, Mr. Frank Adams, who is in the employ of the Government in its irrigation and drainage investigations. While the situation is bad, it is not hopeless; but if nothing is done it will go from bad to worse. There is plenty of water yet to be appropriated. There are many abuses to be corrected. If we go about the matter tactfully—intending to do what can be accomplished, and waiting until the people are with us before the next step is taken—we will be successful in making the necessary changes in the laws. We certainly cannot accomplish the whole reform at one stroke. Let us measure the water first; demonstrate the abuses that exist beyond cavil; then we will see the development of a healthy demand for an administrative system based upon the best experience of other countries, shaded to meet the exigencies of our own particular laws and institutions. The Legislature will then not only be ready but anxious to pass the bill that we will prepare for their consideration.

## CONCLUSIONS.

In view of the statement of facts with which this report begins, and of the considerations expressed in Mr. Thomas' paper and in this report, the Section has reached the following conclusions:

1. Great caution should be observed in legislating on the subject of water rights, so as not to interfere or seem to interefere with rights now vested, in order to avoid the opposition of owners of vested rights to the use of water.

2. The foundation principles of any State definition of water rights are (1) the recognition of the validity of existiug rights; (2) the determination by a State irrigation or public waters department of all physical facts, such as the flow of streams, the diversion by ditches, the areas irrigated, and the extent of bene-

ficial use, essential to any complete definition of rights, and (3) the judicial establishment of rights, at the instance of the Attorney General, on the basis both of the physical data collected by the State irrigation or public waters department and of the testimony regarding the time of use taken by the court or courts; provided that every proceeding to establish rights shall consider every other right, both public and private, on the same stream.

When one turns to the question of a practical working method by which future rights to water for irrigation may be acquired under public supervision and subject to reasonable public control, he finds certain well-established principles that have been worked out, although not wholly put into effect, by the experience of some of the Western States, particularly Wyoming, Utah and Nebraska. Among these are:

(1) That no diversion from any public stream or water source should be made without specific authority from the public, and that, if for irrigation, such authority should be given for only so much water as is necessary for such irrigation; provided, that use alone, without specific authority from the public, shall in no wise establish a right.

(2) That all grants to water shall be made with reference to particular tracts of land, to be legally described in each grant to water; that transfers of right shall not be permitted to the injury of other legal users of water, and that no transfer shall be binding except when approved by public authority represented by a court or State irrigation administrative officer.

(3) That no grant of right to a stream shall be made unless there is unappropriated water available in such stream to supply such grant; and

(4) That all grants to water from public streams shall be subject to public control exercised by State administrative officers so organized that each independent stream shall be considered as a unit, and upon which each right shall be administered with reference to every other similarly granted right on the same stream.

The Section is of the opinion that it would be wise to frame a law for submission to the next Legislature on the lines outlined above, and recommends that the Section be instructed to prepare such a bill to be submitted to the Club for its discussion.

Respectfully submitted,

CHARLES WESLEY REED,

Acting Chairman.

## Discussion by the Club.

At a meeting of the club on July 12, 1905, the following discussion took place on the foregoing paper of Mr. Thomas' and the report of the Section of Public Laws:

### REMARKS OF PROFESSOR CHARLES D. MARX.

Little can be added by me to the paper by Mr. Thomas and the Section on Public Laws of this club. The conclusions submitted by the Section are but a condensed restatement of those arrived at by the commission appointed by the Water and Forest Association.

The bill submitted by this commission aroused opposition. Criticism of it was indeed invited, but it was hoped that such criticism would be constructive, not destructive. Those who opposed the bill have so far failed to bring before the people of this State a workable substitute.

Perhaps it may be wise to go more slowly to pass the necessary legislation in installments as conditions became more and more unhearable. Persoually, I am yet to be convinced that cutting off a dog's tail an inch at a time is a less painful operation than cutting it off at once.

If the conditions described exist, and I think you most all admit that they do, a remedy is necessary. No cure can he made, however, until a correct diagnosis of the patient's condition enables you to apply the proper remedies. For this diagnosis we need the knowledge of certain physical and, if there be such a thing, "legal" facts. To gather the former, a heginning, and a most excellent one was made years ago in California. The investigations of your State Engineering Bureau were famous, before there was any question of national irrigation. For some reason unknown to me the Bureau of State Engineering was abolished. I have heen told that the people wanted answers to their irrigation problems before the necessary data were in hand. Be that as it may, the solution of the prohlems you now have to solve was set hack practically as many years as have elapsed since the aholishment of your State Engineering Bureau, and the partial taking up of this work hy the Bureau of the National Government in co-operation with the State. Had the work of your State Engineering Bureau been continued you would now have the data which suh-paragraph 2 of the conclusions of your Section calls for. It may be possible to convince the people of this State that tbe gathering of this data is essential. They should be told that it will take time and considerable money. Unless the people are willing to take this step it will he useless to try and go farther. All things considered it seems to me that for the present our club might well direct its efforts to urging upon the legislature the re estahlishment of a well organized State Bureau of Engineering. To make it effective it should he put under Civil Service rules, well administered. Co-operation of this bureau with those of the National Government doing similar work is desirable, hut I have little sympathy with those who are constantly looking to Washington for the doing of things which they should do themselves. State initiative is better than State inertia.

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## REMARKS OF ARTHUR L. ADAMS.

Mr. Thomas has not in his paper overestimated the importance of the subject in the future development of the State. The extent to which its water sources can be utilized will finally determine the limit to which its agricultural and horticultural interests can he developed and a rural population supported.

The limit of profitahle development under our present imperfect water laws is already well nigh reached. Any very large increase, especially by private initiative, must be preceded hy such legislation as will define in a practicable way the respective rights of appropriators and will insure the undisturhed enjoyment of such rights without constant recourse to courts of law.

Under such a system, wisely formulated, the waters of the State can be greatly extended in usefulness to the everlasting advantage of all.

In seeking a rational method of controlling the appropriation and use of water, Mr. Thomas has acted wisely in usirg as a base the hill of the California Water and Forest Association. For it is seldom that a proposed legislative measure is drawn under the direction of so able a body of men as that which prepared the bill in question. It is doubtful if that bill can he much improved; and Mr. Thomas' suggested modification is simply in the line of effecting such a change in the method of determining existing rights as he thinks will meet the ohjections raised to the measure as it was presented.

To his suggestion I see no ohjection, although the question is in the domain of law rather than engineering.

The report of the Section in its "Conclusions" seems to favor all the essential provisions as outlined by Mr. Thomas' paper. In one particular, however, the report does not seem entirely clear. In Finding No. 15 the Section endorses a paper prepared by Mr. Charles Wesley Reed, acting chairman of the Section, which paper is then embodied in the report.

This paper favors the securing of such legislation as will lead to the measurement of all streams and the determination thereby of the extent of beneficial use before attempting anything in the way of regulation of water rights. Near the middle of the second column of the printed report, it reads: "In my opinion it would be wiser as a practical measure to delay the attempt to establish an ideal administrative system until the amount of water being beneficially used has been measured by authority of the State"; and near the close of the paper, it reads: "Let us measure the water first; demonstrate the abuses that exist beyond cavil; then we will see the development of a healthy demand for an administrative system * * * ."

As no mention is made in the "Conclusions" of this suggested delay in establishing an administrative system, I am in doubt whether or not it constitutes a recommendation of the Section.

If it does constitute a recommendation, I believe it should not be favored.

Sufficient stream measurements have already been made, and sufficient reports prepared by governmental authority and published by the Agricultural Department and Interior Department to satisfy anyone in need of evidence beyond his own personal knowledge, of the crying need for a revision of our water laws. The reduplication of these reports under other authority will not greatly add to our working knowledge. Again, the determining of the amount of beneficial use on a stream simply for information will not fix a basis suitable for the settlement of water rights years afterward, as diversions on most streams are frequently modified from year to year by the changing of old ditches and the construction of new ones. Such work of measurement would, of necessity, be all gone over again when rights were finally fixed.

"A healthy demand for an administrative system" and for the regulation of water rights will come not by making water measurements, but by a well organized educational campaign conducted by such organizations as the Commonwealth Club and the California Water and Forest Association. It may take some years to accomplish it, but it must come. Progress demands it, and the sooner it is taken actively in hand, the quicker it will be accomplished.

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## REMARKS OF F. S. BRITTAIN.

From both the original paper and the report of the Section, it appears that conditions surrounding the use of water in California are about as bad as they can be.

The writer of the paper tells us that no patchwork scheme will serve to correct the evil, but that a complete reorganization is necessary. The report of the Section, on the other hand, says the reform cannot be accomplished at one stroke. That this apparent divergence is apparent only, and not real, a careful reading of the report of the Section, and of the Water and Forest Society's bill makes clear.

What Mr. Thomas meant was that the legislation, as far as possible, must put an end to the present methods of acquiring nominal water rights, establish of record the rights which have vested, and provide for the proper acquisition of new rights through such instrumentalities of the State as may exist or may be created for these purposes.

What the Section evidently meant was that, even with such legislation, there will still be a long and trying period of adjustment of the new rules to the old conditions.

It is as though two physicians, called in consultation, should agree as to the remedy to be administered, and one should say: "It must be radical"; and the other, "The cure cannot be effected at once." Both would be right. The appendix might be removed by the radical operation, yet tonics would have to be administered during the long convalescence.

The conclusions reached by the Section are fully in accord with this view, for the bill which it asks leave to draw is to be on lines as broad as those of the original Water and Forest Society's Bill.

The only real difference between the recommendation of Mr. Thomas and that of the Section is that he urges the amendment of the original bill, while the Section recommends the drafting of a new bill. In my opinion, the recommendation of the Section ought not to be adopted—at least, at this time.

Assuming for the moment that the original bill is cast aside: The Section recommends that it be directed to prepare a bill which, if it follows the conclusions reached by the report of the Section, must necessarily define numerous criminal offenses and provide for their punishment; it must provide a complete scheme for the establishment of titles to water rights by some judicial procedure to which the State and all users of water shall be parties; it must provide for the exercise of the right of eminent domain in regard to the acquisition of water rights by the State, and provide work for the Attorney General's office entirely foreign to any of its duties as now defined by law. In addition to these matters the bill must provide for the creation and pay of a large number of new offices. In my opinion, from the information now before it, the club is not prepared intelligently even to discuss such a bill, and however great the ability of the members of the Section, much time would be required for the preparation of such a bill as would be accepted by the legislature and withstand the attacks upon it to be made in the courts, even though the nature of those attacks could be foreseen.

Before adopting the recommendation of the Section in this regard, it seems to me the club should have definite information given it by the Section as to the methods by which it proposes to protect vested rights and punish infractions of the new law. If an omnibus bill of this sort should be prepared, as recommended by the Section, it would lead to interminable discussion in the club and serve to defeat the desired object, namely that of having a speedy and efficient remedy provided for the existing evils.

The original Water and Forest Society's Bill was the result of a season's work by a commission composed of lawyers who had made a specialty of both irrigation and constitutional law, of the heads of the Engineering Departments of the two California universities, of the chief of the Irrigation Service of the Department of Agriculture, the hydrographer of the Geological Survey, and the chief of the Reclamation Service under the national irrigation law.

The constitution of such a commission was almost ideal for the consideration of every subject necessary for the careful preparation of such a bill as the club wishes to propose to the next Legislaure. The original bill, we are told, was opposed by those who owned water rights and those who thought that water rights should be taken away from those who owned them. The principal objection to it appears to have been that it made the protection of vested rights depend upon the decision of an administrative commission, instead of upon an adjudication of the courts.

Whatever may be the custom in other countries, the people of England and the United States prefer to leave the adjudication of their rights to the courts rather than to administrative officials, and the writer of the original paper wisely suggested the amendment of the original bill, taking from the administrative officers the power of establishing titles and placing that power in the courts. If this should be done and the bill presented, it may bring out other objections which, in turn, can be met by further amendments, until the bill as nearly as possible may meet the demands of all of the people and be sufficiently broad to provide a remedy for the existing defects.

I would, therefore, respectfully urge upon you to reject the recommendation of the Section and refer the whole matter back to it for detailed information as to the nature of the bill it proposes to draft; or, I would more strongly urge that the Section be instructed to present the original bill amended only so as to place the adjudication of titles in the courts.

THE CHAIR: We have with us this evening a gentleman who has lately become a member of the club, and who is the president of the Water and Forest Association. I take pleasure in introducing Judge John G. North, of Riverside.

JUDGE NORTH: I am very glad to be with you this evening, and am glad to be a member of this club. It is true that owing to some kind of an accident or other I am president of the Water and Forest Association. I do not think that my views upon the subject that has been discussed are the views of the entire membership of that association; in fact, I know they are not, although I think they are the views of a very respectable number of them. I was one of those who opposed the Water and Forest Bill two years ago, and I do not know whether Mr. Reed classes me in the first or second class of the opponents of that bill.

I feel a little hesitancy in discussing it here, because my views are so decidedly different from most of those that have been expressed in this club; but, still, as Vice-President Adams has impressed upon me that this is a club where we are all to express our views, and no feeling comes in, I will say a few words.

It seems to me that there is a misapprehension as to the condition of our water laws as to their practical operation and as to the conditions. I have been unable to see any striking evil that now exists that cannot be reached under our laws as they are. I have been unable to see any reason why property rights in water shall not be judged by the same tribunals which the Constitution has established for other property rights. I am not able to see why it is necessary to establish or require the measurement of streams, which fluctuate from year to year, and offer that fixed measurement as a basis for a record which shall be the absolute official permanent record of the water rights upon these streams. They change necessarily; the laws of nature change them. It is impossible to have them run uniform, and we cannot establish their quantity and the title to a specified amount as we could to a ten-acre lot or by measuring a quarter section of land. The rights to these waters must necessarily rest upon conditions of fact which may be proven in the same way other facts are proven to the courts, and the laws are the things which we should look to to protect us in these rights, as we look to them to protect us in all rights.

Upon the question of the waste of water there is some misapprehension. It is true, water is wasted; and yet I do not think there is any system which can be established which could reach that more effectually than we can under our laws as they now are. The statute expressly says that the diversion of water shall be for useful or beneficial purpose, and if that ceases the right ceases. It seems to me, in any case, where a lower diverter of water sees an upper diverter wasting water to the detriment of the lower man, that he has a remedy. A court of

equity will reach it quicker and more effectively than the administrative system would. It is true that water is stolen, but so it is with other property, and I do not think there is more theft in the case of water than other classes of property. There is no more water litigation in California, in proportion to the amount used and the number of people, than in other States where they have administrative systems. The records do not show it. The condition of water, the conditions that concern its use are such that when we want it we want it badly, and when we have rights that are interfered with we want the matter settled quickly. We have perhaps, orchards whose crops depend upon the water, crops that want relief at once. If we have to go to a water commissioner, to go beyond him to a board of water commissioners, and then to a State board, and then to the courts, by the time we have reached the courts perhaps our crop is gone, but under the laws as they are it only becomes necessary for us to make a showing and a court of equity will settle the matter immediately. If we can make a showing justifying and authorizing a preliminary injunction, we can get it; and, of course, upon the final trial of these cases, the rights are officially adjudicated.

Much has been said, and said here and in these papers read tonight, in regard to the over appropriation of water. It does not seem to me that there is any over-appropriation of water. There is, of course, a claiming of a large quantity that does not exist, but such claims are merely formal. The Supreme Court has said that the notice posted does not constitute an appropriation. The Supreme Court has stated that if the person making the claim finally does become an appropriator by the taking of water and putting it to a beneficial use, his right goes back to the date of the posting of the notice. Of course, when a man's rights may depend in any degree upon the amount of water claimed in the notice, he will claim a large amount, sometimes more than he can use, but his right is always limited to the amount he does put to a useful or beneficial purpose.

In regard to the simplifying of the proceedings for the adjudication of water rights, it does not seem to me that there can be any simplifying of proceedings in this State. They are about as simple as it can be. The whole requirement is that when we begin our suit we state our case in simple and concise language. We do not have to do any more than that. Our system of pleading and practice seems to me about as simple as it can be, and the establishing of water rights, of course, depends upon the proving of our facts; and the facts upon which they depend are, of course, the use, the diversion, the question of appropriation, who used the water ahead of us and whether we have actually put the water to a useful or beneficial use, and whether we have complied with the statutory provisions under which we made the appropriation. There are conditions which we must comply with, the same as in acquiring other properties.

It does not seem to me that there is anything in the way of an evil that exists, or anything material that cannot be reached, under the laws as they are. Of course, it is true that a great deal of the flowing water has been appropriated to use, and it may be there are large tracts of land which have been held in private ownership for many years and not irrigated, the value of which has naturally been increased by the general settling up of the country; and, while the country was settled, of course, under the law the persons who are settling it up require the use of pretty much of all the flowing water, and if they have put it to a useful or beneficial purpose they, of course, are entitled to it.

It has been said that we should take the water that is already in use, to which the right has been acquired, and take that and throw it into a common pot and divide it up. If that were done there would be a great outcry. Some of the advocates of the bill, two years ago, thought that should be done. The difficulties in the way of that seem to me so

great that that process could hardly be considered if the water has been put to a useful or beneficial purpose. If it is not, you can take it now. You can do that under the law now. Another difficulty is this: The condition of California is not the condition of a new State where all property rights are to be established and all rules of property are still to be created; and, in considering what is necessary and wise for California, we must consider the general growth of the State, the history of the State and the history of its water rights and the conditions of water rights and the industries built and based upon them, and consider further the investments that have been made upon them, the securities and the great amount of capital that is represented by these water rights and the amount of disturbance that would be created by anything like a total change of our water laws must also be considered. The State of California, when it first began business, inherited in a way a water system or system of irrigation. The old Mexicans irrigated and we took on that system. At the first session of the legislature it decided that the common law of England should apply in this State, except where it was contrary to the Constitution, and ever since that time the Supreme Court has been trying to pacify these two theories. We now know fairly well what the law is as to riparian rights and as to diversion of wtaer for irrigation. There is some new doctrine now about percolating waters that is giving rise to litigation, but the tendency is a lessening of litigation as to diversion and riparian rights. There is some misapprehension as to the lessening of litigation in States with administrative systems. I have taken occasion to investigate as to the number of water suits decided by the Courts of Last Resort in the Western States and Territories. I took the ten last volumes up to the sixty-eighth volume of the Pacific Reporter, and examined page by page the reports. I examined the cases which involved questions of water rights which would be affected by the State administrative system, eliminating those which dealt with anything but water rights. I was unable to find the number of irrigators from public streams in the different States, but realizing that litigation upon any subject increases as the population increases, I made the comparison with the population of the different States, and I find that today California has far less litigation over questions of water rights than the State of Wyoming which has used the administrative system for ten years; far less than the State of Colorado, having an administrative system for twenty-four years; far less than any other State or Territory where irrigation is practiced, except the State of Washington, where it is practiced very little. I think that if here is to be further consideration of this subject, as is suggested by one of the papers read to-night, the Section might examine the reports with a view of determining the exact facts and giving the statistics as to the amount of water litigation in the different States and Territories, because that would be very interesting information for the club.

I shall be very glad to give the facts I have so far, and will bring them down to date.

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## REMARKS OF JOHN W. FERRIS.

No one can doubt, after listening to the paper read by Mr. Thomas and reading the report of the Section of Public Laws, that there is great need of regulation and administration of the water available for irrigation purposes in the State. The longer this is delayed the more complicated the muddle will become. Year by year the appreciation of the value of water is becoming more fully recognized, and rights consequently are more jealously guarded. I fear the water question is destined to develop endless litigation in the future. My life has been spent in fighting water, in assisting to reclaim the overflowed swamp lands of the State. For years we had no thought but to devise means to shut the water off our lands,

and little dreamed a few years ago that our enemy would one day rank as our best friend.

As our lands became exhausted or, to be more accurate, as they became dried out from the lowering of the water plane, we gradually found irrigation a necessity. On Union Island, within the last two or three years, we have constructed many miles of canal averaging, probably, twenty-five feet in width to distribute water for irrigation purposes.

Having become familiar over a long course of years with the usual behavior of the river and its normal water levels, it never occurred to us to doubt for a moment the certainty of finding all the water we needed for our purposes, but we are just now beginning to find, with some little anxiety, too, that the conditions are changing; that, so great is the volume taken from the river for irrigation purposes above us, that there is a fear that the quantity reaching us may not be as amply sufficient as we had always believed.

The law or riparian ownership, as enunciated in clause 5 of Mr. Reed's paper, entitles an owner to "the natural and usual flow of all its water past his property." We are wondering if the time may not be approaching when it may be necessary for us to claim the protection of this law.

I think the Section would have done well to have suggested the form of commission to whom should be entrusted the work of administering the State's waters.

There can be no doubt that there is much work to be done in determining and tabulating the conditions surrounding each source of water supply before the enactment of any new laws will be necessary, and this work will be the best possible training for the subsequent work of drafting or assisting to draft the necessary laws.

Before the water of the State is utilized to the fullest extent of which it is capable, it is probable that many rights acquired in good faith must be assailed, and some even abrogated. As the task of reconciling the vastly conflicting interests involved will be a very serious and difficult one, might it not be practicable to put the matter into the hands of those people who are directly interested?—to form, in fact, a federation of irrigation districts where local interests may all have representation and, possibly, by giving the parties interested some measure of autonomy, reduce to some extent the clashing of interests that may be feared when there is any attempt made to restrict rights legally acquired?

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## REMARKS OF W. E. SMYTHE.

I am in receipt of your favor of June 26, advising me that I have been appointed to give a five-minute talk on the report of the Section of Public Laws on the paper of Mr. William Thomas, entitled "Regulation of Water Rights," to be discussed at the meeting of July 12, 1905.

I regret to say it will not be convenient for me to be in San Francisco at the date named, and I very much fear that I could not discuss so large a subject satisfactorily to the club or to myself in so brief a time as five minutes. It is a matter in which I am very deeply interested, however, and I give you the following concise statement of my views on the report of the Section, which you may use in any way you see fit:

I am in full accord with each and every one of the fundamental principles laid down in the report of the Section, but would like to make a few suggestions (1) in regard to the way in which these principles should be applied, and (2) in regard

to one subject which is not touched upon by the report, viz., the manner in which we shall effect the storage of our flood waters by means of public enterprise. My suggestions are as follows:

1. The report speaks of the necessity of the determination by some public authority "of all physical facts, such as the flow of streams, the diversion by ditches, the areas irrigated, and the extent of beneficial use, essential to any complete definition of rights," and suggests that such determination shall be made "by a State irrigation or public waters department."

I would ask if this work cannot be done to better advantage by the officials of the National Government already engaged in the work at the joint expense of State and Federal Governments? Stream measurements are now under way at the hands of the United States Geological Survey; facts essential to the definition of rights are being systematically studied by the division of Irrigation investigations of the United States Department of Agriculture. In both of these departments of the National Government we have the most expert experience and ability to be obtained in the United States. Moreover, we are able to put one-half of the expense of the work upon the National Government instead of meeting the entire cost from the State Treasury. I think it well worth while for the club to consider whether the scope of this work cannot be expanded so as to obviate the necessity of creating State machinery in this field. It is a class of work which need not be carried on indefinitely. The facts, once ascertained, will serve as the permanent basis for the administration of our future water system. If we can avoid the opposition which is sure to confront us in any attempt to create an elaborate and expensive department for the measurement of streams and the accumulation of data essential to the definition of rights, and if, at the same time, we can secure the invaluable services of the corps of officials working under F. H. Newell and Elwood Mead, and, especially, if we can escape one-half of the expenses involved in the work by inducing the Federal Government to assume it, as is now done under the joint appropriation provided by the last two legislatures in co operation with the National Administration, then it seems perfectly clear to my mind that it is wise to do so. I urge this suggestion upon the club and advise that the Governor of California, as well as the Departments of the Interior and of Agriculture, be fully consulted in regard to it before any further steps are taken looking to the creation of "a State irrigation or public waters department."

2. Even if this suggestion be adopted, however, it will not obviate the necessity of providing a State administrative officer to supervise future appropriations from our streams and to co-operate with the Attorney General in the judicial establishment of existing rights. Doubtless a bill should be drawn for presentation to the next legislature to meet this elementary need of an enlightened and civilized irrigation industry. But let me warn you that the attempt to provide for this will be met by the fiercest opposition on the part of communities which have worked out their own salvation through a generation of law-suits and which, because of the extraordinary value of water in their immediate neighborhoods, have enforced a degree of economical use which no administrative officer could possibly attain and which could only be realized in response to the demand of stern necessity. I believe I can give you a suggestion which will enable you to frame a law suited to the needs of communities where water is wastefully used and where titles are hopelessly tangled, but which will, at the same time, leave undisturbed other communities not in urgent need of this reform. I think this can be done by general legislation and without the aid of such a constitutional amendment as we discussed a few years ago.

Suppose you provide that the work of the administrative officer shall not begin in any given watershed until a certain proportion of voters, or water-users,

or land-owners, shall have filed a petition with the proper authorities requesting said administrative officer to take that watershed in hand? Suppose you apply the same idea to the judicial determination of titles, providing that the Attorney General shall institute suits to that end only upon petition representing the dominant sentiment of those taking water from a given source of supply? I am not a lawyer, but it seems to me that this is legally feasible and "on all fours" with the present law which gives the people of a locality, susceptible of irrigation from a common source, the right to petition for the formation of an irrigation district. If you could go a step further and provide that the expense involved should be borne by the watershed immediately benefited by the work of the State administrative officer, or the Attorney General, I think this would obviate another objection, but this is of minor importance compared with the need of giving assurance to communities which are happy and prosperous to the effect that they will not be disturbed, while at the same time enabling other communities to obtain relief of which they are sorely in need. In considering this suggestion, please remember that each watershed is complete in itself. The water of the Santa Ana, in Southern California, can never be used to irrigate the Sacramento Valley; the water of Cache Creek, in Northern California, can never be used to irrigate the slopes of San Diego County. Hence, a law which can be applied in one unit, and withheld from another unit, according to the expressed desires of the people living in various localities, meets the needs of the situation. This is due to physical influences which do not apply to general legislation, as a rule. If my suggestion is feasible, I have no doubt such a law could be passed with little opposition, and certainly without serious opposition from Southern California; but, if it is not feasible, then I fear that any attempt to provide for a State administrative officer and a general determination of water titles, would lead to a repetition of the fight which we had in 1903.

3. The report of the Section deals exclusively with the necessity of more law. It makes no reference to more water, and we need water on the land even more than we need additional law on the statute book. It will be answered that the propositions in the report are regarded as quite essential to the further development of the water supply. That is at least partly true; yet, the mere enactment of law providing for the measurement of streams and the determination of water titles will not, of itself, moisten the land or facilitate the building of homes. Such law must be supplemented by a feasible policy providing for the construction of works on lines in harmony with prevailing public sentiment.

The overshadowing economic problem is the storage and distribution of flood waters. Five years ago we had what was called "the flood waters convention." Far-reaching benefits flowed from that convention, but the flood waters are yet wasting in the sea. In the five years which have elapsed since the meeting of that convention great things have happened in the irrigation world. The National Irrigation Law has been passed; the United States Reclamation Service has been organized; public opinion has crystallized in favor of the public ownership of irrigation works and tends strongly in favor of public ownership of other public utilities. But we need tens of millions of dollars to enable us to assert secure control over the forces of nature and lay a broad, solid foundation for a vast population. Where shall we get the money? It is estimated that something like forty million dollars will be needed in the Sacramento Valley alone. We cannot get it from the National Treasury, at least for many years. We probably cannot get it from the State Treasury, for it is most unlikely that the whole State would consent to be taxed for the peculiar benefit of restricted localities. For the most part, then, we must depend on local taxation of lands which are to receive the immediate benefits. Our present district law is almost a dead letter, except in a very few localities, because the people have not confidence in their own ability

to construct costly works, and because the investing public has not confidence in securities issued under such auspices. I have suggested an adaptation of the district law which was unanimously approved by the State Irrigation Association meeting at Modesto, last October, unanimously approved by the National Irrigation Congress, meeting at El Paso, last November; favorably mentioned by Governor Pardee in his most recent message to the legislature, publicly endorsed by the chief engineer of the Reclamation Service, urgently recommended by Senator Francis G. Newlands and other prominent irrigationists, and received with marked favor by the higher officials of the Government at Washington.

The plan is the simplest thing in the world, and its effect would be a wide extension of the benefits arising from the national irrigation policy. The idea is to have the United States Reclamation Service investigate and report upon any project believed to be worthy and urgently desired by the people in the communities immediately concerned. This investigation would be at the expense of the national reclamation fund. If the national engineers reported against a project, that would naturally end it; if they reported in favor, it would probably determine the people to vote to form the district. When the district is formed, and the bonds issued and sold, the proposition is to have the proceeds placed at the disposal of the Secretary of the Interior to be handled like the national reclamation fund; but, of course, expended for the exclusive benefit of the particular district in question. Consider the strength of the proposition as it will appeal, first, to the landowners in the proposed district; second, to the investing public; third, to the settlers who will be needed to colonize the land. Here is a project investigated and recommended by the engineers of the United States Government—a project which is to be constructed by those same engineers. Can there be any question about the confidence which the public will feel in a district under those circumstances? Certainly not, for if there is anything in the world which we all believe in, it is Uncle Sam, and under this plan it is Uncle Sam who will lead us in the building of California. Speaking of this matter, F. H. Newell, chief engineer of the Reclamation Service, says:

"It is feasible, for we are able to call upon the district, the men interested under the State law, to vote the bonds necessary to pay for the contract. These bonds would simply bear interest from the time the money was needed to pay for the construction. It would then enable this work to progress on what seems to me admirable lines, because the men who must pay for the work ultimately could, on security of their own property, advance the money as needed at a low rate of interest, as it is to be assumed that while the credit of the United States might not be behind these bonds, yet I believe it would be so considered in financial circles, and it would give these bonds a standing in the market which an irrigation bond has not now."

If the Commonwealth Club will supplement its plans for the reform of the laws with the earnest advocacy of a great constructive measure of this kind, I believe it will find the whole State responsive to its call. But we must not give the people a stone when they ask for bread—we must not proffer merely more law when they ask for more water.

The attorneys of the Interior Department report that no State legislation is required to make this plan operative, saying it can be done under the California District Law as it stands, but that Congress must give its consent to the expenditure of the funds arising from the sale of district bonds by the Secretary of the Interior. I am assured that there will be no difficulty whatever about that, since we do not ask Congress to appropriate money, but, on the other hand, propose a measure which will actually relieve Congress from financial demands which would certainly otherwise arise.

My final suggestion is that our laws be so amended as to forbid the organization of any further irrigation enterprises on the basis of private ownership of water apart from land. It is not enough to make the water appurtenant to the land. Actual ownership of works should be vested in the owners of the land to be irrigated. To this end, companies should be chartered for construction purposes only. When the people have repaid the cost of the works, together with a reasonable profit on the capital employed, the people should own the works forever. Otherwise you cannot escape the institution of waterlordism and its accompaniment of a water tenantry. And that is feudalism in its most hateful form. Here is business for your State administrative officer. Let him issue permits to construction companies, passing upon the specifications and estimates of cost, and fixing the price to be paid for shares in the enterprise at so much per acre, with adequate interest running against the investment until all the shares are sold. Then let him actually administer the works if you think it better to have him do so rather than to trust the farmers to administer them themselves.

I beg pardon—but one more suggestion: Let your new laws provide that no water right can be acquired by any one individual for a larger area than 160 acres—which is really too large. Compel the subdivision of great estates. It will be a blessing for their present owners, a blessing for the future settlers, a blessing for the merchants, bankers, professional and working men of San Francisco, and for the railroads as well. You are right in your contention that the water of California belongs to the people of California and that that water can pass into private control only upon terms which the people shall lay down. It follows that we have a right to say that the water shall not be so used as to perpetuate the private monopoly of God's green earth, but rather in a way to facilitate the distribution of the land among a multitude of small proprietors.

If the Commonwealth Club is able to unite all the friends of progress upon reasonable measures looking to the use of our wasted waters, it will perform a priceless service for the State. Hoping that it may do so, and assuring you of my hearty co-operation to that end, I remain very truly yours.

## GENERAL DISCUSSION.

MR. E. F. ADAMS: I think we should begin with the report of the Section and first settle whether or not the allegations in the complaint are true. We have at present no concensus of opinion as to the facts as to which we are to devise remedies. Judge North has kindly undertaken to prepare some additional facts which are germane to the subject. We want to get at what the facts are and then let the discussion take its course.

PROF. WING: In making the comparisons as to the amount of litigation, we should have some other fact than the population on which to base our comparison. Another point is that we should consider that while we have a remedy in Courts, is it not true that whenever an action comes up in court, someone has complained and obtained a preliminary injunction and the matter is settled; then comes the difficulty of giving facts and these facts cannot be determined in one, two, or three years. They must be determined by observation in that district for a period of years. That seems to me to require a delay of some kind to establish the facts in regard to the beneficial use of water and the amount of water used in that district. That would bring us back to the establishment of a State board of engineering.

MR. REED: I think that the statement made in the paper that any bill would probably meet opposition in the legislature is true by the opening discussion this evening, because people differ so widely as to the proper thing to be done, and whether anything should be done at all.

There are some things that have been said tonight, principally by Judge North, to the effect that we have a proper remedy at the present time. I think that anybody who is relegated to the courts for the protection of his water rights is relegated to a technical fight where the advantage is to the person or corporation having the ability to hire the best attorneys and engineers, and to put up the biggest bonds, and to keep up the litigation for the greatest number of years; and I think the thing we want to protect is the poor devil who cannot afford that; in other words, the actual operator of the twenty, forty or sixty-acre tract. I do not think that forty acres will stand carrying water rights to the Supreme Courts a half a dozen times, because the man owning it would not have any tract left at the end of the litigation, and it is just this thing that has put the irrigated lands of the State in the hands of corporations, and not in the hands of the small holder of lands in irrigated districts with whom lies the future prosperity of the State of California, so far as irrigated lands is concerned. Save the man from litigation under any circumstances. If there is anything which will deprive a man of his rights it is to apply to courts in a matter of expert testimony against corporations having the means to withstand a long, hard fight. Another statement was that the proponents of the last Water and Forest Bill proposed to take the vested rights in water and put them into a general pot and redistribute it. The proponents of the bill challenged anybody to point out in the bill where that was proposed to be done, and expressly denied that was the object proposed by the bill or could be accomplished under the bill. We proposed to make the vested rights in water, at the present time, sacred. We can ascertain what the vested rights are, and that is the object of his committee.

Litigation between two, three, four or five claimants has nothing whatever to do with the settlement of the rights of the sixth or seventh claimants. Judge North has stated that the mere recording of a claim to water does not vest the water, but it does do so. A man can start to build a canal from a given stream today and he can keep up the work for ten years by putting one or two men on that ditch, and this is being done today in many places I know of, and to my knowledge in the Yuba and Merced Rivers. What sort of a system is that to encourage people to go into business schemes to appropriate water? It is simply a premium put on speculation in water. There is a company on the Yuba River today where they have one or two men claiming to have prior rights to this tremendous corporation, at that time known as the Yuba River Power Company, transmitting power down to Oakland, and yet there was a small company of men, claiming to have prior rights, all the time keeping some work going on in order finally to take away all the water—the rights the Yuba Power Company had acquired in the actual expenditure of money for the development of electricity.

It seems to be supposed that we propose in this report that this administrative system shall have the determination of rights. On the contrary, that was expressly kept out of the system that was proposed. The system would have no power except to gather information, and the information should be authoritative, and then if it were deemed wise to go ahead and establish the complete system, the Attorney General of the State of California would be instructed under appropriate laws to begin suit to quiet title to every water right on a given stream, and the vested rights would be determined in a suit in which every single owner or user of water would be a party and it would be settled for all time and everyone would be protected, and the cost of that litigation should be borne by the State, because the State is responsible for the terrible condition in which water rights are now. The opposition of owners of vested rights and the opposition of the people of the southern part of the State would be so great to an ideal system that it probably could not pass.

Years ago, Mr. Smythe, of San Diego, used to lecture in various places in the State on the need of water, and he would point out the terrible confusion of water rights. He now seems to have gone into the position that if you propose to do what the general concensus of people say should be done, you can count on his opposition. Without a wise system of laws you cannot have more water. Mr. Smythe says we do not want more laws; we want more water.

As far as comparing the litigation or amount of litigation in our State with that of other States and Territories, as to that I personally have no knowledge, but I heard Professor Elwood Mead say that the use of water was absolutely controlled in other places without friction, and I have read his book in which he gave instances of the States, and he occupies a high position and his statements should be given high weight. The chairman of the Irrigation Committee of the House of Representatives certainly did say that the laws of California impeded the appropriation of money for the development of water sources of California. He said that at a public speech the day of our last dinner, and he said it that night.

However we may differ as to the expediency of the remedy proposed by the Section, a large number think that the laws of California are unwise and not devised for the best interests of the State, as shown by its recent development.

MR. TAUSSIG: Judge North's remarks strike me very forcibly, and it might be well to consider whether it is a wise thing to rush to Sacramento to get laws to correct all the faults from which we suffer. It might be true, of course, that it would take a long while to establish rights through the courts, but I would like to raise the question whether it would not take nearly as long along the lines suggested by Mr. Reed.

JUDGE NORTH: As to the statement that it was the intention or the proposition of some of the proponents of the law proposed two years ago that water should be taken away from those who are now using it and give it to others, Judge Works stated in writing over his own signature, in reference to a certain particular locality where they used all the water they took out of the streams, that they used about twice as much as they needed, and half of that should be taken away and given to someone else. In regard to the condition spoken of by Mr. Reed, that an appropriator of water filing a notice may keep a couple of men at work for ten years, I do not think the Supreme Court would back them up at all. If it is a little matter, two men might be considered due diligence, but if it was a big matter I do not think the Supreme Court would consider it at all. It seems to me that the stability of water titles is quite as important as is the stability of land titles.

PROFESSOR MARX: As one of the commissioners which drafted the Water and Forest Society Bill I am in a position to know and do know that every member of the commission recognized that no legislature could impair vested rights, even had there been any disposition to do so, which there was not. And we put into the bill language which, it seems to me, assures the holders of vested rights against any attempt to interfere with them as explicitly as words can be made to do it. I quote the following from that bill:

Section 4. Subject to vested rights therein, whether as riparian owners or by appropriation, the waters of any stream may be appropriated for any beneficial public or private use in the manner provided in this Act, and not otherwise.

Section 21. No permit issued by the board shall authorize the construction of works for the diversion of any water, the capacity of which shall be in excess of the surplus of an appropriated water in any stream, nor shall any permit granted by said board affect or in any way interfere with previously vested rights in the waters of said stream of whatsoever nature.

JUDGE NORTH: That is undoubtedly in the bill. The Constitution would do that for us anyway, if the bill had not. There is also in the bill a provision by which the commission or board created by the bill was to determine, was to have that judicial power as to determining the amount of water which is waste, what was the duty of water, etc., and in that provision it was given power to declare that a user of water was not entitled to hold that which he had used, but that a part of that might be used somewhere else. These questions of fact were to be determined by a board, no one of which was to be learned in the law or of the theories of evidence. The proposition was to have these questions decided in a more speedy manner than through the courts. These questions were to be decided without following out the regular accepted rules of evidence, but in some more prompt and speedy way, without coming down to those principles which govern our courts and which we felt we were entitled to rely upon.

PROF. WING: Did not Judge Works mean to imply that any water that had been used for other than beneficial use was to be taken away?

JUDGE NORTH: He meant that twice as much was used as was actually needed, and they could get along with half and that should be taken away.

PROF. WING: Did you not state that beneficial use of water should be determined by the courts?

JUDGE NORTH: Yes, sir.

PROF. WING: I cannot see that Judge Work's statement takes away the vested right, or advocated that.

MR. E. F. ADAMS: The feeling is very pronounced that nobody knows the duty of water, and that excessive use is very general, and that excessive use results not merely in depriving those who might use the water beneficially, but in positively injuring the land of those using it in excess. There are now in progress costly experiments in this and other States which, in the course of time, are expected to give tolerably accurate information as to the duty of water and it is believed that in the course of years we shall become possessed of that information which will enable sound conclusions to be reached, whereas they cannot be reached now.

MR. REED: Judge North mentioned that the administrative organization in that bill would inquire into the amount of water used. That is undoubtedly true. He says that they had a right to fear that vested rights would be interfered with, and, as hejustly said, the Constitution of the United States and the Constitution of the State of California gave him the right of protection. Whether or not that was in the law, and if any injustice is done by the administrative board, his right of appeal to a court of equity has never been taken away; but, in so far as an administrative system would be just and right in its judgment, it would clear up difficulties; it would let us know what water is being wasted, and would aid justice.

PROF. WING: I think the matter should be referred back to the Section with the request that the Section prepare a bill in accordance with its ideas to be presented to the club for discussion at some future time, and if such bill meets with the approval of the club in the usual manner, that the club go forward with the idea of presenting it before the legislature.

MR. E. F. ADAMS: I believe that the Section would feel that the report which has been the result of a great deal of labor, should be first intelligently and carefully considered by this club. The last request of the Section is that they shall be instructed to prepare a bill in accordance with the views reached by the club. I believe that it would desire the opinion of the club as to whether the facts are correctly stated and complete, and also a discussion, and also the general principles

upon which such a bill should he drawn up. A discussion in detail will run this cluh into the year after next. The report was prepared to avoid questions of detail, and confined itself to questions of principle; and, after the Section has secured the opinion of the club as to the principles involved, it would be then time to go into the question of the bill.

MR. REED: I am sure that the discussion this evening has opened my mind to wider conception of the subject, and I am sure a discussion of the report would aid us in the preparation of the laws proposed.

PROF. WING: I move that the matter be referred back to the Section for verification of statistics and compilation of further statistics, and that the next time the matter is considered that it be taken up section hy section.

Carried.

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## Supplementary Report of the Section of Public Laws August 9, 1905.

The section of public laws which was requested to add to its former report on the Regulation of Water Rights such statistical matter bearing on the suhject as might be available, respectfully reports as follows:

Any such presentation of the statistics of water litigation as would enahle the Club to form a judgment as to the extent to which such litigation would he reduced hy the establishment of a State administrative system would require time and lahor entirely beyond the power of the memhers of the Section to give. The Club can expect such data only when its memhership and consequent revenue permits the employment of a person competent to conduct such investigations, and who shall devote his entire time to the servicce of the Cluh. At our present rate of growth we may hope to reach that condition within a few months. For the present the Section must content itself with the expression of the opinion that under our constitution nohody can be prevented from going to law if he has the money to pay a lawyer, and that the extent to which water litigation would be reduced by an administrative system would depend largely on the character, standing, level headedness and competence of the administrative officers. We should not expect any one to deny that a clear-headed and impartial Board of Experts, having such authority as can be constitutionally given to it, and who should assemble the contestants in a controversy ahout a tahle and go over the whole matter with them would probably save a great deal of litigation.

Nevertheless, while recognizing the impossihility of presenting any very satisfactory statistical report we are ahle by the kindness and industry of Judge John G. North to give the numher of water cases which have been decided hy the Appellate Courts of the States and Territories lying west of Kansas and Nebraska, during the past few years.

We do not know how many cases are pending in these courts, how many have been compromised, nor have we nor could we get, with any reasonahle effort, any record whatever of the cases in the lower courts, many of which are never appealed. Neither are there any means of ascertaining the cost to the public, and the litigants of conducting these cases, often, and perhaps usually, involving immense volumes of the conflicting testimony of "experts," and "old residents." All that information is essential to any such comprehension of the evil of litigation over water as would possibly tend to inspire serious effort to abate the evil, and

possibly to take some chances in so doing. The data supplied by Judge North will be found in his letter, which is as follows:

## LITIGATION OVER IRRIGATION WATER.

To the Commonwealth Club, San Francisco, Cal.:

In accordance with a suggestion made at the last meeting, I have obtained from the returns of the Twelfth Census the number of irrigators in the various arid States and Territories, which are given as of the year 1899, which are the latest figures obtainable, and also from the twenty-one volumes of the "Pacific Reporter," extending from the year 1899 to the year 1905, being volumes 59 to 79 inclusive, a list of the various suits determined by the Appellate Courts of the same States and Territories, involving disputes in relation to water and the use of water. I have eliminated those suits involving only questions of rights of way, validity of irrigation district bonds, the handling of storm waters, and percolating waters, and all questions which are outside of those presumed or supposed to be settled under a State administrative system of waters and water rights, without litigation. I have had the work of examining the volumes mentioned done by a clerical force in my office, and I believe it to be accurate.

At the risk of being somewhat voluminous I will first give a list of the cases, with the citation of the volume and page of the "Pacific Reporter," and a note as to the subject matter of the litigation, and will follow this with a tabulated statement showing the number of irrigators in each of the States and Territories in 1899, the number of water suits in each, contained in the volume mentioned, and the relation of this number to the number of irrigators, as obtained from the census returns. The purpose of this is to show whether there is less or more water litigation in the State of Wyoming, which has had a State administrative system of water control and distribution for about ten years, and the State of Colorado, which has had such administrative system for about tweny-four years, than in other of the arid States and Territories, and particularly California, which has never had such State administrative system.

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## LIST OF WATER SUITS DECIDED BY APPELLATE COURTS OF THE ARID STATES AND TERRITORIES, AS FOUND IN VOLUMES 59 TO 79, INCLUSIVE, OF THE "PACIFIC REPORTER."

### ARIZONA.

1. Miller v. Douglas, 60 Pac. 722,
   Interference with water right.
2. Biggs v. Utah Irrigating Ditch Co., 64 Pac. 494;
   Dispute as to priority of rights.
3. Slosser v. Salt River Val. Canal Co., 65 Pac. 332;
   Dispute as to priority of rights.
4. Hayois v. Salt River Val. Canal Co., 71 Pac. 944;
   Disputed rights to water.
5. White v. Brash, 73 Pac. 445;
   Diversion of irrigating water.
6. Hargrave v. Hall, 73 Pac. 400;
   Right to irrigating water.
7. Gould v. Maricopa Canal Co., 76 Pac. 598;
   Appropriation of water.
8. Howard v. Perrin, 76 Pac. 460;
   Appropriation of water.
9. Brockman v. Grand Canal Co., 76 Pac. 602;
   Abandonment of water right.

### CALIFORNIA.

1. Smith v. Hawkins, 59 Pac. 295;
   Priority of right.

2. Beck v. Pasadena Lake Vineyard L. & W. Co., 59 Pac. 387;
   Interference with water right.
3. Fogarty v. Fogarty, 61 Pac. 570;
   Disputed water rights.
4. Bree v. Wheeler, 61 Pac. 782;
   Disputed water rights.
5. Smith v. Stearns Rancho Co., 61 Pac. 662;
   Injunction against interference.
6. Sample v. Fresno Flume and Irrigating Co., 61 Pac. 1085;
   Performance of contract to furnish water.
7. San Jose Land & W. Co. v. San Jose Rancho, 62 Pac. 269;
   Appropriation of water.
8. Senior v. Anderson, 62 Pac. 563;
   Quieting title to water right.
9. Steinberger v. Meyer, 62 Pac. 483;
   Right to divert water.
10. Fifield v. Spring Valley Water Works, 62 Pac. 1054;
    Diversion of flood waters.
11. Wallace v. Farmer's Ditch Co., 62 Pac. 1078;
    Injunction against dam.
12. Richter v. Union Land and Stock Co., 62 Pac. 39;
    Failure to construct ditch.
13. Fresno Canal and Irr. Co. v. Park, 62 Pac. 87;
    Contract for water right.
14. Purser v. Baker, 62 Pac. 190;
    Payment for water right.
15. Crow v. San Joaquin & K. R. Canal & Irr. Co., 62 Pac. 562;
    Duty of company to furnish water.
16. Pallett v. Murphy, 63 Pac. 366;
    Contract for use of water.
17. Yarwood v. West Los Angeles Water Co., 64 Pac. 275;
    Diversion of underground water.
18. Rogers v. Riverside Land & Irr. Co., 64 Pac. 95;
    Collection of water assessment.
19. Cave. v. Tyler, 65 Pac. 1089;
    Disputed diversion.
20. Mabb v. Stuart, 65 Pac. 1085;
    Disputed diversion.
21. Byers v. Colonial Irr. Co. of Honey Lake Valley, 66 Pac. 732;
    Enjoining diversion dam.
22. Schirmer v. Drexler, 66 Pac. 180;
    Enjoining diversion.
23. Lowery v. San Joaquin & K. R. Canal & Irr. Co., 66 Pac. 225;
    Damages for bursting of levee.
24. Churchill v. Louie, 67 Pac. 1052;
    Enjoining diversion.
25. Barneich v. Mercy, 68 Pac. 589;
    Suit to enjoin dam.
26. Hayes v. Silver Creek & P. L. & W. Co., 68 Pac. 704;
    To enjoin diversion.
27. Ventura L. & Power Co. v. Meiners, 68 Pac. 818;
    To enjoin diversion.
28. Rice v. Meiners, 68 Pac. 817;
    To enjoin diversion.
29. Patterson v. Mills, 68 Pac. 1034;
    Determine conflicting rights.
30. Parker v. Gregg, 69 Pac. 22;
    Action for diversion.
31. Churchill v. Rose, 69 Pac. 416;
    Suit for diversion.
32. Fisher v. Feige, 69 Pac. 618;
    Riparian owner's right to build dam.
33. Coleman v. Le Franc, 69 Pac. 1011;
    Conflicting right to water.
34. Hildreth v. Montecito Creek W. Co., 70 Pac. 672;
    Appropriation.
35. Arroyo Ditch & W. Co. v. Dorman, 70 Pac. 737;
    Rights of co tenants in water.

36. Fuller v. Azusa Irr. Co., 71 Pac. 98;
Appropriation rights.
37. Pendola v. Ramm, 71 Pac. 624;
Water rights as appurtenances.
38. Senior v. Anderson, 72 Pac. 349;
Appropriation for irrigation.
39. Hildreth v. Montecito Creek W. Co., 72 Pac. 395.
Appropriation. Same as reported in 70 Pac. 672;
40. Mt. Carmel Fruit Co. v. Webster, 73 Pac. 826;
Homesteader's conveyance of water right.
41. Miller v. Dondero, 73 Pac. 583;
Use of water for irrigation
42. Craig v. Craftcn W. Co., 74 Pac. 762;
Diversion of water.
43. Roberts v. Crafts, 74 Pac. 281;
Diversion of water.
44. Richey v. East Redlands Water Co., 74 Pac. 754;
Dispute among stockholders as to use of water.
45. Rose v. Mesmer, 75 Pac. 905;
Riparian right for irrigation.
46. Town of Suisun C. v. De Frietas, 75 Pac. 1092;
Injunction irrigating water.
47. Montecito Valley W. Co. v. City of Santa Barbara, 77 Pac. 1113;
Diversion of stream by tunnel.
48. Southern Cal. Inv. Co. v. Wilshire, 77 Pac. 767;
Prescriptive right, as against riparian proprietor.
49. Griseza v. Terwiliger, 77 Pac. 1034;
Water rights of tenants in common.
50. Chapea W. Co. v. Chapman, 77 Pac. 990;
Contract for delivery of water.
51. South Tule Ind. Ditch Co. v. King, 77 Pac. 1032;
Disputed claim to water.
52. Miller & Lux v. Enterprise Canal & Land Co., 79 Pac. 439;
Disputed water right.
53. Gutierrez v. Wege, 79 Pac. 449;
Prescriptive right to water.
54. Los Robles Water Co. v. Stoneman, 79 Pac. 880;
Suit to enjoin diversion.
55. Allen v. Stowell, 79 Pac. 371;
Mandatory injunction to remove dams.

## COLORADO.

1. Upper Platte & Beaver Canal Co. v. Ft. Morgan Reservoir & Irr Co., 60 Pac. 484;
Suit to determine water rights.
2. Crippen v. Burroughs, 60 Pac. 487;
Adjudication of water rights.
3. Lower Latham Ditch Co. v. Louden Irr. Canal Co., 60 Pac. 629;
Priority of rights.
4. Grand Junction Water Co. v. City of Grand Junction, 60 Pac. 196;
Contract to furnish city with water.
5. Rio Grande Land & Canal Co. v. Prairie Ditch Co., 60 Pac. 726;
Adjudicating water rights.
6. Lamson v. Vailes, 61 Pac. 231;
Adjudicating priority of rights.
7. Wright v. Platte Valley Irr. Co., 61 Pac. 603.
Adjudication of water right.
8. Cache La Poudre Res. Co. v. Water Supply & Storage Co., 62 Pac. 420;
Conflict of water rights.
9. Handy Ditch Co. v. Louden Irr. Canal Co., 62 Pac. 847;
Priority of appropriations.
10. Peterson v. Durkee, 62 Pac. 370;
Adjudicating water rights.
11. New Loveland & Greeley Irr. Co. v. Consolidated Home Supply Ditch & Reservoir Co., 62 Pac. 366;
Priority of rights.
12. Bunkers Irr. Mill & Imp. Co., v. Platte Val. Irr. Co., 63 Pac. 305;
Injunction against using water.

13. Hector Min. Co. v. Valley View Min. Co., 64 Pac. 205;
    Adjudication of water rights.
14. Crippen v. White, 64 Pac. 184;
    Rights of riparian proprietors.
15. Wellington v. Beck, 65 Pac. 626;
    Priority of water rights.
16. Grand Valley Irr. Co. v. Lesher, 65 Pac. 44;
    Quieting title to water rights.
17. Farm Inv. Co. v. Alta Land & W. Co., 65 Pac. 22;
    Rights of directors to make appropriation separate from company.
18. King v. Ackroyd, 66 Pac. 906;
    Quieting title to water right.
19. Crippen v. Comstock, 66 Pac. 1074;
    Water right as appurtenant to land.
20. Lake Fork Ditch Co. v. Haley, 67 Pac. 158;
    Disputed water rights.
21. Fairplay Hydraulic Min. Co. v. Weston, 67 Pac. 160;
    Disputed water rights.
22. Chapman v. Board of Commissioners Phillips Co., 68 Pac. 134;
    Suit regarding salary of water superintendent.
23. New Cache La Poudre Irr. Co. v. Water Supply & Storage Co., 68 Pac 781;
    Conflicting water rights.
24. Randall v. Rock Ford Ditch Co., 68 Pac. 240;
    Disputed water rights.
25. Mabee v. Platte Land Co., 68 Pac. 1058;
    Disputed water rights.
26. Patterson v. Nurnberg, 68 Pac. 134;
    Disputed water rights.
27. Medano Ditch Co. v. Adams, 68 Pac. 431;
    To enjoin diversion.
28. Hudson v. Adams, 68 Pac. 431;
    To enjoin diversion.
29. Chew v. Board of Co. Commissioners Fremont Co., 70 Pac. 764;
    Salary of Water Superintendent.
30. American Nat. Bk. of Denver v. Hoeffer, 70 Pac. 156;
    Question of water rights being appurtenant.
31. Wellington v. Beck, 70 Pac. 687;
    To enjoin diversion.
32. Schenider v. People, 71 Pac. 369;
    Penalty for infraction of water laws.
33. Great Plains W. Co. v. Lamar Canal Co., 71 Pac. 1119;
    Conflict of water rights.
34. Buckers Irr. Mill & Imp. Co. v. Farmer's Ind. D. Co., 72 Pac. 49;
    Underground water a part of stream.
35. Butterfield v. O'Neill, 72 Pac. 807;
    Appropriating irrigating water.
36. Blakeley v. Ft. Lyon Canal Co., 73 Pac. 249;
    Sale of excessive water rights.
37. Farmer's High Line Canal & Reservoir Co. v. White, 75 Pac. 415;
    Wrongful diversion of irrigating water.
38. Platte Val. Irrigation Co. v. Central Trust Co., 75 Pac. 391;
    Injunction by appropriator.
39. Ogilvy Irr. & Land Co. v. Insinger, 75 Pac. 598;
    Injunction by appropriator.
40. Needle Rock Ditch Co. v. Crawford Clipper Ditch Co., 75 Pac. 424;
    Practice on appeal under irrigation statute.
41. Bessemer Irr. Ditch Co. v. Woolley, 76 Pac. 1053;
    Enjoin interference with ditch and water rights.
42. Crippen v. X. Y. Irr. Ditch Co., 76 Pac. 794;
    Priorities.
43. Gutheil Park Inv. Co. v. Town of Montclair, 76 Pac. 1050;
    Injunction for interference with water rights.
44. Baer Bros. Land & Cattle Co. v. Wilson, 77 Pac. 245;
    Adjudicating priorities of right.
45. Equitable Securities Co. v. Montrose & D. Canal Co., 79 Pac, 747;
    Action against a company for failing to furnish.

## IDAHO.

1. Mahoney v. Neiswanger, 59 Pac. 561;
   Priority of appropriation.
2. Stocker v. Kirtley, 59 Pac. 891;
   Injunction to protect ditch.
3. Brossard v. Morgan, 61 Pac. 1031;
   Priority of appropriation.
4. Pocatello Water Co. v. Standley 61 Pac. 518;
   Rights and duties of company.
5. Feeney v. Chester, 63 Pac. 192;
   Adjudication of rights.
6. Parke v. Boulware, 63 Pac. 1045;
   Rights of ditch owners.
7. Bardsly v. Bois City Irr. & L. Co., 67 Pac. 428;
   Disputed water right.
8. Hall v. Blackman, 68 Pac. 19;
   Disputed water right.
9. Pyke v. Burnside, 69 Pac. 477;
   Appropriation of water.
10. Walker v. McGinness, 69 Pac. 1003;
    Change of point of diversion.
11. Jack v. Village of Grangeville, 74 Pac. 969;
    Municipal water contract.
12. Bear Lake County v. Budge, 75 Pac. 614;
    Action to settle water rights.
13. Stuart v. Noble Ditch Co., 76 Pac. 255;
    Discharge from canal.
14. Hard v. Boise City Irr. & L. Co., 76 Pac. 331;
    Transfer of water rights from one tract to another.
15. Boise City Irr. & L. Co. v. Stewart, 77 Pac. 25;
    Application for prohibition.
16. Moe v. Harger, 77 Pac. 645;
    Adjudication of rights.
17. Murry v. Nixon, 79 Pac. 643;
    Quieting title of water rights.

## MONTANA.

1. Toohey v. Campbell, 60 Pac. 396;
   Adjudication of water rights.
2. Smith v. Denniff, 60 Pac. 398;
   Water right as appurtenance.
3. Anderson v. Cook, 64 Pac. 873;
   Disputed right of diversion.
4. Beech v. Spokane Ranch & W. Co., 65 Pac. 111;
   Enjoining diversion.
5. Sweeney v. Montana Cent. Ry. Co., 65 Pac. 912;
   Damages for diverting stream.
6. Goon v. Proctor, 71 Pac. 1003;
   Abandonment of water right.
7. Phillips v. Coburn, 72 Pac. 291;
   Priority of appropriation.
8. Talbott v. Butte City W Co., 73 Pac. 1111;
   Appropriation of irrigating water.
9. Campbell v. Flannery, 74 Pac. 450;
   To enjoin using creek, channel to convey ditch water.
10. Flannery v. Campbell, 75 Pac. 1109;
    To determine right in irrigation ditch.
11. Fordham v. Northern Pac. Ry. Co., 76 Pac. 1040;
    What is part of stream.
12. Leggat v. Carroll, 76 Pac. 805;
    Diversion and right to use of water.
13. Hayes v. Buzard, 77 Pac. 423;
    Water right as appurtenance.
14. Miles v. Butte Electric & Power Co., 79 Pac. 549;
    Injunction to prevent use.
15. Campbell v. Flannery, 79 Pac. 702;
    Same as reported in 74 Pac. 450;

16. Norman v. Corbley, 79 Pac. 1059;
    Quieting title and injunction.

## NEVADA.

1. Cardelli v. Comstock Tunnel Co., 66 Pac. 950;
    Enjoining interference with use.
2. Walsh v. Wallace, 67 Pac. 914;
    Disputed water rights.
3. Gotelli v. Cardelli, 69 Pac. 8;
    Action for diversion.
4. Tonkin v. Winzell, 73 Pac. 593;
    Right to irrigating water.
5. Ennor v. Raine, 74 Pac. 1;
    Priority of appropriation.

## NEW MEXICO.

1. De Baca v. Pueblo of Santo Domingo, 60 Pac. 73;
    Disputed appropriation.
2. Agua Pura Co. of Las Vegas v. Mayor &c. of City of Las Vegas, 60 Pac. 208;
    Contract to furnish water.
3. Millheiser v. Long, 61 Pac. 111;
    Disputed appropriation.
4. Albuquerque Land & Irr. Co. v. Gutierrez, 61 Pac. 357;
    Right of corporation to appropriate.
5. United States v. Rio Grande Dam & Irr Co., 65 Pac. 276;
    Injunction against erecting dam.

## OREGON.

1. Boyce v. Cupper, 61 Pac. 642;
    Use of water by riparian owner.
2. Mattis v. Hosmer, 62 Pac. 17-632;
    Enjoining interference.
3. Emison v. Owyhee Ditch Co., 62 Pac. 13;
    Damages for overflow from ditch.
4. Browning v. Lewis, 64 Pac. 304;
    Disputed diversion.
5. Jones v. Conn, 64 Pac. 855-1068;
    Diversion by riparian proprietor.
6. Cox v. Bernard, 64 Pac. 860;
    Adjudicating diversion rights.
7. McDougal v. Lame, 64 Pac. 864;
    Right established by adverse use.
8. Brown v. Baker, 65 Pac. 193-799;
    Disputed appropriation.
9. Brosnan v. Harris, 65 Pac. 867;
    Priority of water right.
10. Oviatt v. Big Four Min. Co., 65 Pac. 811;
    Abandonment of water right.
11. Carson v. Hayes, 65 Pac. 814;
    Enjoining diversion.
12. Oldenberg v. Oregon Sugar Co., 65 Pac. 869;
    Damages for diversion of stream.
13. Mace v. Mace, 67 Pac. 660;
    To enjoin diversion.
14. Salem Flouring Mills Co. v. Lord, 69 Pac. 1033;
    Disputed water right.
15. Oregon Const. Co. v. Allen Ditch Co., 69 Pac. 455;
    Disputed water right.
16. Britt v. Reed, 70 Pac. 1029;
    To enjoin diversion.
17. McCall v. Porter, 70 Pac. 820;
    Disputed priority.
18. Durning v. Walz, 71 Pac. 662;
    Disputed water right.
19. Union L. & P. Co. v. Lichty, 71 Pac. 1044;
    To enjoin diversion.
20. McCall v. Porter, 71 Pac. 976;
    Same as reported in 70 Pac. 820:

21. Outhouse-Cottell v. Berry, 72 Pac. 584;
Right to irrigating water.

22. Glaze v. Frost, 74 Pac. 336;
Rights to prior appropriations.

23. Anderson v. Adams, 74 Pac. 215;
Contract to furnish water for irrigation.

24. Gold Ridge Min. Co. v. Tallmadge, 74 Pac. 325;
Contract to furnish water for irrigation.

25. McPhee v. Kelsey, 74 Pac. 401;
Priority of appropriation.

26. Bolter v. Garrett, 75 Pac. 142;
Prior appropriation, extent of rights.

27. Beers v. Sharpe, 75 Pac. 717;
Extent of appropriation.

28. Harrington v. Demaris, 77 Pac. 603;
Conflict between riparian owners.

29. Krause v. Oregon Iron & Steel Co., 77 Pac. 833;
Enjoining dam.

30. Bauers v. Bull, 78 Pac. 757;
Enjoining diversion.

31. Little Walla Walla Irr. Dist. v. Preston, 78 Pac. 982;
Adjudicating rights of district to distribute water.

32. Board of Regents of State Agricultural College v. Hutchinson, 78 Pac. 1028;
Enjoining interference.

## UTAH.

1. Fisher v. Bountiful City, 59 Pac. 520;
Adjudicating rights of appropriator.

2. Center Creek W. & Irrigation Co. v. Lindsay, 60 Pac. 559;
Adverse use of water.

3. West Point Irr. Co. v. Moroni & Mt. Pleasant Irr. Ditch Co., 61 Pac. 16;
Enjoining obstruction of flow.

4. North Point Con. Irr. Co. v. Utah & S. L. Canal Co., 63 Pac. 812;
Enjoining interference.

5. Eliott v. Whitmore, 65 Pac. 70;
Adjudicating extent of water right.

6. Wasatch Irr. Co. v. Fulton, 65 Pac. 205;
Adjudication of water rights.

7. Conant v. Deep Creek & Curlew Val. Irr. Co. 66 Pac. 188;
Adjudicating water right.

8. Salt L. City v. Salt L. City W. & El. P. Co., 67 Pac. 72 and 71 Pac. 1069;
Right of secondary use of water for power.

9. Salt L. City W. & El. P. Co. v. Salt L. City, 71 Pac. 1067;
Same as reported in 71 Pac. 1069.

10. Howcroft v. Union & Jordan Irr. Co. 71 Pac. 487;
Disputed appropriation.

11. Lost Cr. Irr. Co. v. Rex, 73 Pac. 660;
Diversion of irrigating water.

12. Whitmore v. Utah Fuel Co., 73 Pac. 764;
Appropriation of irrigating water.

13. Orient Min. Co. v. Freckleton, 74 Pac. 652;
Rights of appropriator.

14. Whitmore v. Pleasant Valley Coal Co., 75 Pac. 748;
Under statute providing right of way for irrigating ditch.

15. Nash v. Clark, 75 Pac. 371;
To condemn right of way.

16. Cole v. Richards Irr. Co., 75 Pac. 376;
Appropriation of water.

17. Seeley v. Huntington Canal & Ag. Ass'n.; 75 Pac. 367;
Damages for failure to deliver water.

18. Ogden City V. Bear Lake & River Waterworks Irr. Co., 76 Pac. 1069;
City water works contract.
19. Tilton v. Sterling Coal & Coke Co., 77 Pac. 758;
Adjudicating water rights.
20. Promontory Ranch Co. v. Argile, 79 Pac. 47;
Abandonment of water right.
21. Herrman Irr. Co. v. Keel, 69 Pac. 719;
Turning developed water into stream and diverting again.

## WASHINGTON.

1. Northport Brewing Co. v. Parrott, 60 Pac., 403;
Adjudicating water rights.
2. Matheson v. Ward, 64 Pac. 520;
Adjudicating water rights.
3. Miller v. Lake Irr. Co., 67 Pac. 996;
Disputed water rights.
4. Longmire v. Smith, 67 Pac. 246;
Disputed water rights.
5. Barnes v. Gerberg, 67 Pac. 568;
To enjoin diversion.
6. Briggs v. Murray, 69 Pac. 765;
Question of appurtenance.
7. Carter v. Wakeman, 70 Pac. 393;
Disputed water rights.
8. Sullivan v. Johnson, 70 Pac 246;
Drainage.
9. State v. St. John, 71 Pac. 192;
Dispute as to payment of warrants on ditch fund.
10. Sander v. Wilson, 76 Pac. 280;
Appropriation.
11. Suter v. Wenatchee W. Power Co., 76 Pac. 298;
Negligent construction of canal and flood way.
12. Everett Water Co. v. Powers, 79 Pac. 617;
Adjudicating right of diversion.
13. Bryant v. Frank H. Lamb Timber Co., 79 Pac. 622;
Suit to enjoin dam.

## WYOMING.

1. Farm Inv. Co. v. Carpenter, 61 Pac. 258;
Adjudication of water right.
2. Whalon v. North Platte Canal and Colonization Co., 71 Pac. 995;
Priority of rights.
3. Stoner v. Mau, 72 Pac. 193;
Appropriating irrigating water.
4. State v. Ausherman, 72 Pac. 200;
Appropriating irrigating water.
5. Willey v. Decker, 73 Pac. 210;
Right of prior appropriator.
6. Stoner v. Mau, 73 Pac. 548;
Involving right to irrigating water.
7. Rutherford v. Lucerine Canal and P. Co., 75 Pac. 445;
Abandonment of appropriation.
8. Ladd v. Reedle, 75 Pac. 691;
Injunction against diversion.
9. Farm Inv. Co. v. Gallup, 76 Pac. 917;
Quieting title to water right.
10. Ryan v. Tutty, 78 Pac. 661;
Adjudicating water rights.
11. Johnston v. Little Horse Creek Irr. Co., 79 Pac. 22;
Adjudicating water rights.

The following is a tabulated statement of the number of irrigators in 1899, the percentage of increase in the number of irrigators during the ten years preceding 1899, taken from the census returns above mentioned, and covering the arid States and Territories, and also a statement of the number of water suits in each of the said States and Territories, appearing in the volumes named, and the relation of the number of suits to the number of irrigators.

| ARID STATES AND TERRITORIES. | Number of Irrigators 1899. | Percentage of Increase in Number in Preceding Decade. | Number of Water Suits Pacific Reporter, Vols. 59 to 79. | Number of Water Suits as Compared with Number of Irrigators. |
|---|---|---|---|---|
| Arizona | 2,981 | 177.3 | 9 | 1 to 331 |
| California | 25,611 | 86.5 | 55 | 1 to 465 |
| Colorado | 17,613 | 82.3 | 45 | 1 to 391 |
| Idaho | 8,987 | 107.9 | 17 | 1 to 528 |
| Montana | 8,043 | 117.0 | 16 | 1 to 502 |
| Nevada | 1,906 | 63.3 | 5 | 1 to 381 |
| New Mexico | 7,884 | 155.6 | 5 | 1 to 1576 |
| Oregon | 4,636 | 47.2 | 32 | 1 to 144 |
| Utah | 17,924 | 84.3 | 21 | 1 to 853 |
| Washington | 3,513 | 235.9 | 13 | 1 to 270 |
| Wyoming | 3,721 | 94.1 | 11 | 1 to 338 |

As showing that the decision of the Administrative Board or Officers in the State of Wyoming is not held conclusive or final, I quote the head note to the decision in Ryan v. Tutty, 78 Pac. 661:

Under Rev. St. 1899, Section 888 et seq., providing for the division of the State into water districts in charge of Water Commissioners and Superintendents, empowered to regulate the use of water by different appropriators according to their priorities, and declaring that from the decision of a Commissioner in such matters an appeal shall lie to the Superintendent, from him to the State Engineer, and from his decision to the Circuit Court, a decision of a Commissioner and Superintendent as to the right to the use of water, though not appealed from, is not an adjudication conclusive on the Courts.

While it is possible that there may be slight errors in the foregoing statements, I have made every effort to secure accuracy, and any slight error that may have crept in will not change the result so as to make it appear otherwise than that the amount of litigation in the State of California, as related to the number of irrigators, compares very favorably with the amount of litigation in those States which have State administrative systems of the control of flowing waters.

All of which is respectfully submitted, JOHN G. NORTH.

## Comments by the Section.

Commenting on the foregoing paper, the Section would call attention to the following:

(1) Of the States named the following have no State administrative systems whatever:

| State. | No. Cases. |
|---|---|
| Arizona | 9 |
| California | 55 |
| Montana | 16 |
| New Mexico | 5 |
| Washington | 13 |
| Colorado | 45 |
| | 143 |

Note:—Colorado has a State Engineer, but his duties are strictly professional and with no control over diversions. All water controversies go directly to the Courts, as in California.

The following States have State administrative officers in most cases with substantial but not uniform degrees of control of diversions, but as shown by the date of the Acts establishing such systems it is unlikely that many cases arising under them can yet have been decided by the Appellate Courts:

| State. | Date of Act. | No. Cases. |
|---|---|---|
| Idaho | March 11th, 1903 | 17 |
| Nevada | Feb. 16th, 1903 | 5 |
| Oregon | Feb. 22d, 1905 | 32 |
| Utah | March 12th, 1903 | 21 |
| | | 75 |

It is evident that whenever an administrative system is established in any State a crop of cases attacking the validity of the law itself will at once spring up, so that the normal working of the law cannot be seen until those questions are settled.

The one State which has a really vigorous administrative system in force long enough to enable a judgment to be formed as to its working, is:

| State. | Date of Act. | No. Cases. |
|---|---|---|
| Wyoming | 1891 | 11 |

In view of these facts the Section is unable to see that the data collected by Judge North afford a means of comparing the water litigation of States with or without an administrative system.

2. The comparison, according to the number of irrigators, adopted by Judge North, is not without value and at least has the merit of being the best means available. And yet it is evident that when one diversion, as in Southern California, may serve 1000 irrigators or more, while in a State like Wyoming or part of Colorado, where irrigation is used on comparatively large tracts for raising forage, a single diversion may serve but a small number, conditions exist which are not comparable; litigation arises solely over diversions, and the number of diversions per case is the only satisfactory method of comparison. Even that is not wholly satisfactory, for water litigation always varies with the density of the irrigating population. These observations are made for the sole purpose of showing the great difficulty, if not the impossibility, of deriving much benefit from statistical methods in a study of this question.

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## EXPERIENCE OF WYOMING.

While the statistics of diversions are not available in most States, they are obtainable in Wyoming, as will be seen from the letter from C. T. Johnston, State Engineer, Wyoming, to whom the Section referred the substance of Judge North's remarks at our last meeting, for his comment. Mr. Johnston's letter accompanies this report. Mr. Johnston takes a wholly different view of the operation of the Wyoming law from that of Judge North, as may be seen from the text, which is as follows:

THE STATE OF WYOMING ENGINEER'S OFFICE.

CHEYENNE, Wyo., July 25, 1905.

Mr. Charles Wesley Reed, San Francisco, Cal.

Dear Sir:—Your letter of July 22nd has been received. I am very glad to be placed where I can let the truth be known regarding the operation of the Wyoming irrigation law. I am the more pleased since I have read much that Judge North has said relative to water and the part the courts should take in the determination of claims or rights to use the same. I am satisfied that he has not given much study to the administrative phase of the Wyoming and Colorado systems, although I have never doubted his knowledge of the law and the court decisions relating to water rights.

From an administrative standpoint California is at the bottom of the ladder, in my judgment. Montana is probably next and Colorado third. Washington has not entered the field as yet where an administration is deemed necessary. Oregon has provided a State Engineer and has enacted a good law. While the prejudice of the people in some localities may delay the enactment of laws providing for an administration, yet this must come in time, and I believe the best administration is the one which does the most for the people. I do not consider that the determination of a water right is an intricate matter except in so far as the courts have made it intricate by not restricting testimony to the actual facts upon which a right to use water should be based.

Judge North might find that some litigation had occurred here by examining the files of the "Pacific Reporter." Every case that has thus far arisen in the District Courts with the exception of one or two has eventually been appealed to the Supreme Court of the State because some question of constitutionality or interpretation has arisen. Since the passage of the present law in the winter of 1890-91 the Board of Control has determined the rights of over 5,000 ditches. But seven appeals have been taken and these have affected less than fifty of the ditches included in the work of the board. Our work is direct and we reach all parties. The determination is made in less than a year even on the larger streams and the cost to the irrigator is $1.75 for each ditch.

Before 1890 a few streams were adjudicated by the courts. I am sending you the first report of the Territorial Engineer that was published. You will find a tabulation of several of the court decrees in this report and also some discussion of the errors into which the courts had fallen at that time. You will notice that beneficial use had but little to do with the volume of water allotted to the various ditches.

There are between 10,000 and 11,000 diversions in this State. In the next three years the Board of Control will determine practically all of the outstanding rights under permits and we do not anticipate any litigation, because most of the questions which might otherwise arise, have been already settled by Supreme Court decisions.

The courts make the adjudications in Colorado. Litigation is common there and the greatest trouble arises from injunctions, which are often granted to the injury of many. You doubtless know that California has suffered through a similar attempt to administer court decrees, or principles recognized by the courts in the same manner.

I am sending you the two last reports of the State Engineer. The report for 1901-02 gives a tabulation of all of the work done by the Board up to the fall of 1902. Much has been accomplished since that time. I know of but few offices where such records as these can be found, and where the records of an entire State are thus concentrated. The irrigation laws of the State have recently been published in pamphlet form and we are sending you a copy of these.

If the public domain had never been surveyed and an orderly method instituted for settlement, our people would doubtless have been compelled to select their own claims and rely upon the courts to determine the boundaries. All of the problems which are now settled by admistrative offices would of necessity have come to the courts. It requires no argument at this time to sustain the policy of the government in this particular. It is more difficult to measure water and hence more difficult to divide it between various claimants. Measurements can and are made, however; irrigated land can be measured and all facts upon which a right to use water can be determined by any man who understands the principles of good irrigation law.

The last case before our State Supreme Court was in the courts of the State for fifteen years. All of the parties interested in this suit are bankrupt to-day. Their lands have passed into the hands of others. The same determination would have been reached by the Board of Control within six months without expense to the water users. An administrative officer understands what information he must secure before he can determine a right. The court must depend upon biased testimony from both sides, or all sides, and then guess at the truth. Where only circumstantial evidence is obtainable, or where some point of law has to be interpreted the court is unquestionably the tribunal to which the matter should be referred, but where simple facts and evidence has to be obtained and where this can be secured largely by surveys and measurements, there is no question in my mind but that such work should remain in the hands of administrative officers.

I shall be glad to write to you further should you need anything further regarding the operation of the Wyoming law. It has been in operation for fif-

teen years, and I feel that the wisdom of its provisions has been fully demonstrated in the past and no better evidence of its popularity is needed than is contained in the official correspondence of this office.

There is but one irrigation or water case in the courts to-day in Wyoming that I know of. It will probably not be concluded for some years yet, and has already been in the courts two years.

Sincerely yours,
CLARENCE JOHNSTON, State Engineer.

## REPLY TO SOME CRITICISMS.

It may possibly keep the discussion more compact and snug if the Section takes this opportunity to make its rejoinder to such criticisms of its report as have thus far been made.

1. The public has an actual or potential interest in the waters of each stream in California, until it has been adjudicated that the public has no interest therein. Until such adjudication has been made no title to the use of water is unassailable We are not aware that the public has ever heen a party to any water suit in the State, in which case there is not an unquestionable water title in California. We know that in many suits between two or more parties using water from a common source, decrees have been made which are assailable by others not parties to the suit, but using water from the same source. We know that decrees have been made dividing between two claimants more water than existed in the stream, while the other claimants not parties to the suit were using and still use large volumes of water thus divided.

Such a condition is disgraceful. It has resulted from the incapacity or neglect of the people to enact proper legislation. It is capable of being remedied by a suit brought in the name of the people to quiet title to the waters of all streams. Such proceedings would be costly and require a long time. Nevertheless, such a possible remedy exists. It should be employed. If it is employed, obviously the entire cost should be borne by those by whose fault the conditions exist—that is, by the people of California.

2. The Section cannot reply to assertions that vested rights are assailed by the proposed legislation, because everybody knows that vested rights cannot he disturbed. It would oppose vigorously any legislation which would seem to be an attack on vested rights, hecause such legislation could come to nothing.

But a requirement that vested rights shall be defined and recorded is not an attack upon them. It is settling them forever. As it is proposed that such definition and record shall be made without cost to owners or claimants, it is hard to understand why they should object to the process, unless some should fear that rights which they claim as vested may be found not vested. To object to such process on the part of the public is to declare that the public should never assert its claim to any water, but leave its rights undefined, to be struggled for hy all, and finally to go to the strongest. The Section cannot assent to that view. It insists that the public ought to ascertain what water remains at its disposal, and then apportion that water substantially as was proposed in the Water and Forest Society Bill.

There is a quiet but general assumption that if in a controversy involving the use of water from a common source an administrative officer should decide one way and the courts to the contrary, the administrative officer would therehy be proved to be in the wrong. On the contrary, the presumption of equity is wholly with the administrative officer, who is the equal of the Judge in integrity and capacity, and previously possessed of the expert knowledge which the court can ohtain only from the testimony of others, usually conflicting. The training of the administrative officer has specially fitted him to deal with the facts of the case,

and he would have much more than a layman's knowledge of the law. One of the greatest advantages of an administrative system for the regulation of the use of water is, that if a case must go to trial, the court has the advantage of the judgment of an impartial expert to begin with, and may call that expert as an impartial witness, instead of being forced to rely on the paid experts of the litigants.

To the suggestion that the Section report a bill instead of a statement of general principles, the reply must be made that the members cannot afford the time to draft a bill, until it has an idea of the nature of the bill which the Club will approve. This will be approximately determined by the action of the Club on the recommendations in the Section's report. If a bill were prepared first, experience shows that the discussion would tend to wander off into detail, to the neglect of principle. That killed the Water and Forest bill. If the Club approves the recommendations of the Section, it will in due time report a bill in accordance therewith, which will be such a bill as in the opinion of the Section can be passed, and which will therefore contain no detail which can be omitted and leave the bill in a workable shape. Those who favor so radical a reform as is favored by most of us, should not make the mistake of trying to get everything at once. If they do, they are likely to get nothing.

To the suggestion that the Club direct its efforts mainly to securing co-operation between State and Federal Government, for the conservation and distribution of irrigation waters, the Section would reply that the first suggestion which we should receive from Federal sources would be that we secure the passage of a law in principle substantially identical with the Water and Forest Society's Bill. Through the efforts of the United States Reclamation Service, a similar act has been passed in the States of Nevada, Idaho and Oregon. If by that suggestion it is meant that it should be made impossible for private individuals of corporations to divert water, the Section cannot favor that course, nor could the Club by any possibility secure the passage of such an act. We shall all be heartily glad to promote co-operation between the State and Federal Governments, on the lines suggested by Mr. Smythe, but the question now before the Club is as to what the people of California shall do for themselves.

Respectfully submitted,

CHARLES WESLEY REED,
Acting Chairman of the Section.

THE CHAIR: We have with us to-night, as a guest of the club, Judge Frank H. Short of Fresno who is very familiar with this subject, and from whom the club would like to hear.

JUDGE SHORT: I imagine, gentlemen, that in the few things I shall say to-night I shall be at considerable difference with what has been said thus far in the discussion of this interesting and important subject.

I shall endeavor to take no more of your time than will enable me to make as clear as I can my views upon the situation, and in what I shall say I shall not endeavor to speak directly to the subject, but approximately so.

I have not been present at the previous meetings and have not had the time or opportunity to examine and consider what has thus far been said, and I am therefore not informed as to the details of the previous discussion or definitely as to the point you are approaching. Since coming to the banquet I have sacrificed my appetite to my desire for information and have read as much

as I could of what has already been said upon this subject, and I must admit that the whole tenor and tone of what has been said reminds me of that old familiar hymn which I used to hear, but which I am sorry to say I have not heard recently, which runs "Hark from the tombs a doleful sound, my ears attend the cry."

I do not make a specialty of pessimism, neitber do I think it is wise to be over optimistic, and it might be desirable to introduce a few theories of christian science into the discussion of the water question in this State. It is an old saying that there is nothing that hurts a dog so much as to give him a bad name, and certainly there is no limit to the effort that has been made to give the irrigation laws of California such a name. I stand ready to refute the argument of any gentleman who says that in their general scope and spirit and operation, the irrigation laws of California are bad. If he says they are imperfect, I say, yes, most laws are more or less imperfect. If he says that they might be improved, I say in some respects. I entirely deny that tbe California laws have been formed with the intent to produce or tend to produce unnecessary litigation. Admittedly, we have had a great deal of litigation about water rights; so we have had about mines and real estate titles and commercial transactions, and in regard to an infinite number of other matters, where there has been much energy, much development and much advancement, usually and nearly always they are coupled there with a proportionate amount of litigation. I have heard everywhere this general indictment of the California irrigation laws. I have grown I must confess a little weary of this iteration and reiteration of cbarges that may have some possible slight foundation, but with no justification in my judgment for their general scope and constant repetition.

I attended the National Irrigation Congress at Ogden, and a good portion of the time that was not devoted to the irrigation laws of other states and eulogizing the Mormon settlers of Utah—who were present in large numbers and therefore entitled to bouquets—was devoted to abusing the laws of California and arraigning tbem as unequal, unjust and destructive of all of the best interests of the State. From my distinguished friend, Senator Newlands of Nevada, down the list and including every speaker who also spoke and whose names may be added to the list of the ones that are forgotten and that cannot be remembered without referring to the Secretary's report, each appeared to think it was his highest duty and special privilege to abuse without restraint or much refutation, the irrigation laws of this State.

Notwithstanding all that has been said, after some years of experience and consideration of this subject, I do not believe any man can put his finger upon any important provisions of the laws of this State that has retarded the legitimate use of water for irrigation. I am not discussing here the doctrine of riparian rights. It may be admitted without discussion that if in the first instance our laws had been construed and decided allowing of the more liberal appropriation of the waters of the running streams of this State, that the use of water for irrigation would have been somewhat increased, and the public welfare would have been somewhat advanced. As to whether or not this could have been done with due regard to the just rights of private property, was a question for the Supreme Court of this State to decide, and it did decide that the rule that the owners upon a stream were entitled to its use and flow, was a right of property, and that this right, with due respect to such property rigbts could not be disturbed, and such being the law I do not understand that it is proposed to undertake to seriously affect tbe question of riparian rights one way or the other by legislation. It being a right of property and I presume

is necessarily recognized as beyond the reach of direct legislation. Notwithstanding the application of the common law doctrine of riparian rights, the major part of the waters of the streams of this State,—at least south of the central portion of the State—have been devoted to irrigation and other beneficial uses either upon riparian lands, or where appropriation has either not been resisted by riparian owners, or there have been agreements and arrangements arrived at satisfactory to the riparian owners and to the appropriators. Excepting the conflicts between riparian owners and diverters, and which conflicts were natural and unavoidable, I do not believe that the laws of this State have at all tended to produce litigation, or are at all unequal, unfair or unjust.

Let us consider for a moment the elementary laws of this State with relation to the appropriation and diversion of water to beneficial uses. I for one believe that we owe a great deal to the early miners and mining industry of this State for the liberal and equitable character of our laws with relation to the appropriation and use of water for beneficial purposes. I use the words liberal and equitable character of our laws advisedly but with due deference to the gentlemen who have asserted that they possess neither the characteristics of liberality or of equality. Under the conditions prevailing during the early mining period the miner appropriated the water and used it in the development and working of his claim. The first miner that appropriated it had the first right to so much of the stream as he appropriated to beneficial uses, and held and enjoyed this right as long as his beneficial use continued. The second comer was second in right and so on and the use of each and all of them continued only so long as it was actually beneficial. When the beneficial use ceased, the right ceased, and some other person desiring to make use of the water then had the right to take it up and continue the use as long as it was desired, actual and beneficial. The laws of this State, therefore, are that any person desiring to appropriate waters of this State may, if the riparian owner does not object and, if such objection is made, upon a settlement and agreement with him, or if no settlement can be had then after condemning and appropriating the right as other and similar rights can be condemned, an appropriator may divert so much of the waters of the stream as he may desire. The diversion must be made and completed with due diligence. No right to the water attaches unless the water diverted is appropriated to a beneficial use. The right to such appropriated water is good as against all later comers so long as the beneficial use continues. When the use ceases, the right ceases and if the use is excessive, extravagant or unnecessary, only so much can be retained and used as is useful and beneficial. The use need not theoretically produce the highest results but it must be actual and beneficial.

The suggestion of eliminating the doctrine, first in time, first in right, would be destructive of the best interests of all irrigators and actual users of water. If another appropriator could come along and divide with the first appropriator to-day and the third would come along and divide with both of them to-morrow the right to water would be parceled out and divided up until no man could plant with any certainty of irrigating or harvesting his crop and could not at all afford to plant permanent orchards and vineyards and other like crops requiring constant and sufficient irrigation, and therefore the progress and development of the irrigation interests of the State would be retarded instead of advanced.

The limit of what is beneficial is reached by the laws of the State which now say that the use must not be wasteful or extravagant but that the right is confined to the taking of so much water as is reasonably necessary to maintain and continue the beneficial results. Above this necessary quantity other appropriators can make and maintain a further diversion and establish a right

to the water subject only to the prior beneficial uses. If there is anything monopolistic, unjust or unequal about this law, I should like to have somebody point it out. An irrigation company, that is to say, a company diverting and appropriating water for sale, rental or distribution upon the lands of others, acquires no right to the water except as it is taken and used for beneficial purposes. The canal company and the land owner may agree if they can upon satisfactory terms or rates for the furnishing of water, and such an agreement is binding and lawful, and ought to be so, if they cannot agree the canal com pany appropriating the water cannot establish and continue to charge its own rates, but the water users may have the rates fixed by the Boards of Supervisors or other designated governing bodies, and these rates (in the absence of a mutual and satisfactory agreement) within the limitation that they do not take property without just compensation, are binding and lawful. The canal company cannot, therefore, monopolize water, or acquire any title to water except for beneficial uses; it cannot charge unreasonable or extortionate prices, and as a matter of fact the canal companies in this State appropriating water for sale, rental and distribution have not made upon the whole, or in any instance to my knowledge, above fair returns upon the investment of time, labor, capital and industry in the development and appropriation of water. I do not, therefore, think that anyone in the light of the facts can maintain and argue that the law in this regard is unjust or unequal or unfair to the actual users and consumers of water.

It has been asserted that the legislature of this State will not pass even a moderate, fair or reasonable bill upon the subject of irrigation. I do not think this assertion can be maintained for the reason that no such moderate. fair or reasonable bill to my knowledge has in recent years been presented to the legislature of this State for passage.

I am a great admirer of the legal ability and learning of my distinguished friend, Judge Works, who some two or three years ago drafted and presented a bill to the legislature for passage. I was a member of the committee appointed to consider this bill, and while there were some features of it which I favored, there were several to which I objected. In the first place it undertook to legislate as to property rights in water, and since I believed that the legislature could not and should not accomplish anything so far as changing property rights was concerned and would be productive only of useless litigation, I did not favor these provisions. The bill imposed and would have required if carried out such an enormous annual expenditure of money as to be I thought practically prohibitive. Further, the bill sought to bring the rights of irrigation and the right to divert water from all streams of this State under a Board of Engineers connected with State authority, and no one could commence to divert water without a license or authority so to do, and such a license could not be granted at all, or rightly should not be, unless the Board was advised as to the quantity of water in the stream, the amount which they deemed necessary for riparian uses and also the extent and priority of each and every appropriation therefrom. Such a provision as to all of the smaller streams of this State I thought totally unnecessary and an unreasonable burden upon the diversion and use of water by small farmers. I also thought and now think that as applied to the actual diversion and beneficial use of water that a provision for such sweeping supervision would tend to retard rather than advance the use of water for irrigation and in the long run would tend to increase rather than to diminish litigation. Undoubtedly laws could have been passed in the first instance that would have resulted in less litigation that we have actually had. I think also we would have had less irrigation and less use of water, and for my part, while I think all unnecessary litigation should be discouraged, I think it is better to

have active and immediate appropriation of water, its application to beneficial uses and the consequent litigation, than it is to restrict both the diversion and use of water and the litigation resulting therefrom.

I have heard complaints that irrigation companies and the irrigators and water appropriators and users of the State of California have been active in their opposition to all of the recent irrigation bills. I think the best of the argument is with the Southern California irrigators. While you people north have been cultivating your rheumatism and pessimism and have been abusing the laws, the people south under the very same laws have diverted and used the waters of their portion of the State until practically every drop of water in Southern California to the satisfaction of the people of that portion of the State is appropriated and applied to the beneficial use of irrigation. It therefore naturally appears to the Southern irrigator that the laws have been good enough for him, which have developed the highest and most efficient system of irrigation in America, if not in the world, ought to be good enough where the water is more bountiful and the opportunities of irrigation and returns therefrom are greater. For my part, I would favor any reasonable legislation calculated to prevent monopoly of water, but I am not able to see how under our existing laws water can be monopolized. I should very cordially favor any legislation tending to facilitate the determination of existing rights, not by a commission arbitrarily determining the same, but by due process of law which had just as well be resorted to in the first instance, because it will have to be in any event in the end. I should also favor legislation to provide adequate authority to prevent and punish the willful and wrongful diversion of water, especially from canals and other sources of supply, where the diverter knows that he is taking what justly belongs to another. I should favor the ascertainment of the capacities of the various streams of this State for irrigation and also the accumulation and publication of all available data as to the existing appropriation, and as to existing rights I would not attempt to confer power upon any Board of Engineers to adjudicate or determine the rights of any man or of any appropriator. They could accumulate and publish correct data and information and this would afford a means for amicable settlements between appropriators and users of water, and if correct could be introduced in litigation if such became necessary. But as I have already stated, if the Board should undertake to determine rights upon the various streams of this State where either diversion and irrigation had progressed as far as they have and where in many instances prior conflict as to rights are already actually settled, the process would be to unsettle instead of to settle and encourage rather than retard litigation.

I heard read with some interest the letter of Mr. Johnson of Wyoming. I have the pleasure of being personally acquainted with Judge Van Devanter, who in a considerable degree at least, drafted or assisted in drafting the irrigation laws of Wyoming, and I know him to be a man of high character and of great legal ability, and I therefore assume that with relation to the conditions existing in Wyoming that they have a very good law for that State. It has, however, occurred to me that Wyoming would be a very favorable State in which to try the experiment of female suffrage and the experiment of novel irrigation laws. There are not many women in Wyoming and there is in proportion to the arable land a great deal of water. In California you can irrigate advantageously the year round when the streams are high and when they are low, and the irrigaton is desirable and beneficial all of the time; in Wyoming, you can only irrigate in the spring and early summer. Crops irrigated in the fall of the year would seem to provide vegetation only to be frost bitten, and any irrigation in the late fall and winter in that State would necessarily be conducted by the ice man delivering ice to be used for irrigation purposes. There is no

comparison between the conditions in Wyoming and in this State. While the water is of some value there it has no value in comparison with its value here. They have, as I understand it, practically all of the water needed in that State, both for the use of riparian owners and the use of irrigators, and it was merely a question of arranging and providing for the distribtution and use of this water, and this has been well done as I understand it. But to have undertaken to apply the same laws to the diametrically opposite conditions in this State would have been to have retarded irrigation, produced confusion and multiplied litigation.

I am apprehensive that the bad reputation of the irrigation laws of California is largely due to Bulletin 100. I am also well acquainted with Mr. Elwood Meade. I know that he has done a great deal of work of great value to irrigators. I appreciate his industry, his capacity, and his good intentions. You will remember that this Bulletin 100 gives especial attention to the irrigation conditions on Kings river. The statement of the conditions assumed to exist on Kings river as a matter of ancient history were perhaps substantially correct. At the time this report was published, no doubt notices enough had been posted on Kings river to have appropriated most of the water of the Gulf stream, but such a notice does not give even a presumptive right, it is merely a notice of intention which goes for naught, unless the appropriation to a beneficial use has actually been made. The suits referred to in Bulletin 100 were no doubt all filed and at one time were pending. Mr. Meade concluded his report on Kings river by stating that it would defy the ingenuity of man to determine anything or settle anything with relation to the conflicting rights to water on Kings river. I do not claim any special ingenuity, but I do claim to know as much about the diversion and use of water from Kings river as any other person, and before Mr. Meade's report was published I had drawn agreements which had then been executed that settled all of the earlier conflicting rights to the diversion and beneficial use of the waters of that river, and within one or two years after the report was published I had either drawn or assisted one way or the other in drawing. agreements that settled the rights to all of the normal and usual flow of Kings river amounting to about five or six thousand cubic feet per second. There is a greater flow of water than this in Kings river, and we are now engaged in the effort, which I have no doubt will ultimately be successful, to settle all conflicting rights to this water so that practically at this time and definitely in the future all of the waters of Kings river are being, and will continue to be, diverted without litigation or any serious conflicts of interest and devoted to the beneficial use of irrigation upon lands riparian and non-riparian to that stream. I therefore state that it is unfortunate that Bulletin 100 instead of stating matters that were merely matters of history at the time it was published. did not state the then actual and existing conditions, because before the book was published the principal conditions complained of and alleged to be undesirable had been removed, and at this time there is no stream of equal size in America from which the waters are better diverted or in regard to which there is less litigation than as to the normal and usual waters of Kings river.

I listened with interest to Senator Newland's abuse of our irrigation laws at the meeting of the Ogden Congress; I heard with interest his eulogy of the beautiful, symmetrical and highly desirable laws of Nevada, which I believe by the way were written by Senator Newlands. I thought, however, that it was somewhat singular that the State of Nevada possessed the most advanced, the most desirable, and the most perfect irrigation laws in America, and yet could show about as little actual beneficial returns from irrigation as any State in the arid region. I thought it was also a little strange that the irrigation laws of California were so unjust, so oppressive, so productive of litigation, and so pro-

hibitive of irrigation, and yet the actual and undeniable results of irrigation in California are that to-day we have the greatest production and the largest benefits from irrigation of any State in the Union. While I hope much advancement and improvement will occur in Nevada, I have no apprehension that even in the dim and distant future it will ever be in the race as compared with the results in California.

The Fresno canal system with which I have been connected as attorney for many years, collects from the irrigators under its system less than one hundred thousand dollars per year for diverting, conveying and distributing this water for irrigation purposes. The crops and returns actually produced, and which would not exist but for this irrigation, are approximately, sometimes more and sometimes less, than eight million dollars per annum. This water costs little more than 1 per cent of the value of the products produced and realized by the use of the same. If anybody wishes to compare this result with any other irrigation system under any other law, the comparison will be welcomed, and if the conditions are better they will be investigated and adopted if possible.

I like the man of theories, if his theories produce results, but I like better the man who has theories but who applies them as water should be to actual and beneficial uses, and whose theories are productive of corn and wine and raisins and fat cattle and all of those other things that go to make life desirable and endurable in the arid west, and which except for irrigation would not exist. It seems to be popular nowadays to talk about the delays and injustices of the courts. There is no other race that has contributed so much to the sciences, the inventions and learning, the progress and the civilization of the world as the Anglo-Saxon race. The foundation of their success and prosperity has been their devotion to due process of law and their firm and unyielding respect for the rights of property. Obviously if one neighbor wishes to trespass upon another neighbor and acquire something that his neighbor has already acquired by earlier use and by his industry and intelligence, and the law does not permit him to carry out his design to get what belongs to the other the unsuccessful one is inclined to abuse the law; but the law that protects a man in the beneficial use of what he has honestly acquired and is honestly and beneficially using is entirely satisfactory to me.

I said that our laws are not perfect; I said that there should be some present and prompt authority for the distribution and division of water and that a law would be desirable that would punish the trespasser and would give some prompt redress where one neighbor tries to take what belongs to another. But the laws of this State in their spirit and in their operation, in their respect to rights of property, in their requirements for beneficial uses, and in their limitation that the right shall extend only so far as the beneficial use shall extend, are highly desirable from my point of view, and while we have had a good deal of litigation in the course of forming and shaping our irrigation rights, they are now largely formed and shaped, and I imagine that new developments will not encounter more difficulty than the old ones have, and if new irrigators are as industrious and capable and persistent as the old, I imagine that in time the valuable waters of this State will be distributed beneficially over the lands of the State. Any law proposed must be satisfactory to the actual irrigators and persons actually interested in the appropriation, diversion and use of water, and if they are not so they will not pass, and ought not to pass.

Before concluding, I wish to say that the progress of nature and the advancement of science frequently overcomes difficulties and relieves situations and brings about conditions which were not thought of a little while before. I used to think with all of the other people in this State that the land of the State sus-

ceptible of irrigation was limited by the quantity of water that could be diverted from the natural flow of our streams and applied to irrigation. I now know from somewhat intimate knowledge of both subjects that by the reservoiring of waters in the mountains increasing the flow of the streams in the later months, and more especially by the development of almost unlimited and inexhaustible supplies of electric power, and with the modern and improved system of pumping, that there can be pumped from the inexhaustible subterranean sources of supply in the Sacramento and San Joaquin valleys sufficient water to irrigate nearly, if not quite, every acre of arable land in those two great valleys. There is no question about it, and this water can be pumped and can be available for irrigation every month in the year for not more than one-half of the present cost of irrigation south of the Tehachapi where water costs from five to fifteen dollars per acre. Even if the law permitted it, it would therefore be impossible for anybody in the great central valleys of this State to monopolize, control, or charge extortionate prices for the use of water.

This is a great State, and the conditions and opportunities of development in this State are great and wonderful and constantly increasing.

I desire in so far as I can to turn the minds of my friends from any unreasonable or unfair ideas with regard to the irrigation laws of this State toward the subject of actual irrigation and the better utilization, the fairer and more extensive distribution of the waters of this State, both to the end tbat the arid lands may be irrigated, and in the same connection and for the same purposes, that the swamp and overflowed lands may be reclaimed so that this State may be brought to the condition of development and prosperity of which it is so admirably suited.

THE CHAIR: Paragraph one of the report of the section is now before the club. Tbe secretary will read it:

1. The method prescribed by California law for acquiring title, or color of title to water, or the use of it, is the cause of endless litigation.

MR. CROTHERS: I would object to that on the ground that there has been absolutely nothing advanced to show that the present law has increased litigation.

JUDGE DENSON: I move that the section be rejected and that we do not agree to the proposition just read.

MR. WALCOTT: This statement is founded upon the paper by Mr. Wm. Thomas which brought forward a number of instances as to the extent of appropriation of individual streams under the present laws whereby the total of registrations of title in California have been enough to submerge the whole continent of the United States several hundred feet deep with water. Such a system that permits this must lead to litigation and is certainly wrong.

MR. CROTHERS: We have a similar provision for the claiming of mineral rights in this State and anyone familiar with that kind of litigation knows that one claim on top of another will not disturb the title of the first claim. It does not even cloud the title because the right is perfectly known. The first claimant has the property providing he follows the provisions of the statutes and the mere fact that the same property is claimed over and over again does not necessarily require litigation nor indeed does it induce litigation in nine cases out of ten. The mere fact that the same mineral claim is covered again and again does not disturb the original owner. It is simply a matter of determining whether or not the water claim is in use.

PROFESSOR SNEDDEN: I think it would be very unfortunate if the rejection of the first statement would carry with it the rejection of the work this

club is trying to do regarding water rights. Twenty-two years ago there was a valley in Southern California containing a lot of vacant land. The land was taken up by settlers. I do not know the amount expended in litigation over water rights there but it has been going on for twenty years and is not settled yet. It has come about that the original appropriators of the water and the original litigants have litigated themselves poor and the land is sold out. It is true that we are approaching a certain settlement with regard to the appropriation of falling streams but we are just opening up another great field in the matter of flood waters and in the matter of underflow. We know of the difficulties in years past in the matter of land boundaries before systematic surveys were made. We are in just that predicament to-day with regard to water rights. Even to-day a man can force another away from his rights because he has not the money to carry the case into the courts. In so far as we could do for our water rights in this State what the government has done in the matter of land boundaries, it seems to me that we should do it.

JUDGE DENSON: The whole foundation on which society is built is the right of property and the right to property originated and comes always in the idea of the man who got it first. What else could we have done in this State? How else could we have managed this great water question than simply to say that he who gets it first shall be protected in its enjoyment and use. It has been shown very clearly to-night that a man cannot go and appropriate a water right and simply sit down and keep other people from using it. I have the right to go upon an unappropriated stream, post my notice of location, file that in the Registrar's office and then within a limited short time I must get actually to work and must diligently prosecute that work and make my appropriation of that water, otherwise anybody else can have it. I must devote that water to a beneficial use and purpose. A man can use only so much as he can profitably and properly use. I have no right to dig a ditch from a stream and flood my land and drown it out. That is not profitable use. I am simply wasting that water. Anyone can go above me and cut down that water and appropriate it to his own use. Suppose I take out of a stream enough water to run four mills. You go above me and take out water except enough to actually run my mills. The law of California will protect you in doing it and will prohibit me from wasting that water. I think the laws of California are strictly in accordance with the fundamental idea of the acquisition and holding and enjoyment of property. I do not believe we will aid ourselves if we pass this resolution and endorse this sentiment saying that the laws of California are bad and have brought us endless litigation. It is an axiom. No patent right was ever worth a continental until it had been litigated through the courts and established. Are we going to say the patent laws are bad? What valuable tract of land is there in this State but what has been the subject of more or less litigation. Nearly every piece of land in the State has been in some form or other subject to litigation in courts. Are we going to say the land laws of California are bad? Certainly not. The cupidity of man is such that A is trying to get away from B property. That is human nature. We cannot improve on that. The rights are nearly all settled. It is true that there has been a great deal of litigation. There has been litigation on everything of value but there is no more on water rights than in any other thing.

MR. E. F. ADAMS: It is unfortunate that we cannot confine our discussion to the precise questions before the club. Nobody that I know of has ever proposed to the legislature to take away any man's property. Nobody here would favor it. It is, however, proposed to segregate the water which has been appropriated from any which may remain in public control and to provide for the disposal of that remainder, when ascertained, with such precautions, and by

such legal processes as we ought to have used in the beginning. Neither has it been proposed by anybody that I ever heard of—certainly by no organized body —to make any change whatever in the laws and principles governing priorities in acquiring water, or the conditions under which the right to its use, after diversion, is acquired and maintained. On the contrary it is proposed to create a State public authority to see that these laws, which Judge North and Judge Denson and others—including myself—so highly approve are enforced in letter and spirit, and not put the cost of such enforcement on poor men who have been so foolish as to attempt irrigation supposing that those laws would be obeyed. It is certain that a multitude of good men have gone broke in this State trying to get the courts to do what all the judges, I believe, who have addressed us, say they will do. They go broke often, doubtless, because they wrongly did in the beginning things which a good administrative officer would have told them they could not legally do, and often, also, merely because they had not the money with which to hunt up and pay the old inhabitants and experts, or enlist the services of such lawyers as Judge Short. It may not be wise to do any of the things which are really proposed, and as to that we wish to hear, but we shall get no light by arguments against doing something entirely different. Just now, of course, we are discussing whether or not the irrigation laws of California are bad in that they encourage litigation. In my judgment they are very bad indeed in that respect, owing to the ease with which the foundation of a costly lawsuit can be laid, the fact that the water in private control is not segregated from that remaining in public control, the absence of any consolidated record of claims and adjudications, and of any administrative officials to enforce that part of the law which is good.

JUDGE SHORT: In the discussion some have appeared to think that the notice posted gives title. That is entirely wrong. The notice is that I intend to acquire title; that I intend to divert, and if I divert without the notice I get just as much as if I had given notice. Why do we not indict the mining laws. I declare upon information and knowledge that there have been more filing notices posted for the oil in this State three to one than there has been for water. There is such a thing as having law enough and such a thing as having too much law. Litigation cannot be prevented without destroying rights. I say that the laws have produced litigation but that litigation was necessary in order that the water might be appropriated and that beneficial use might be made of it. Must we to prevent litigation have a Board to establish that there is so much water in the river? Must that Board determine in advance that which the courts may undetermine the next time? Such a law would be unduly expensive and would retard the development of the State. If you think that any law can be devised as to existing conditions that would operate better and would result in greater development why go ahead and suggest such a law.

MR. CUSHING: It seems to me that Judge Denson and Judge Short have touched on the main point that should be considered in connection with the discussion on this particular article that has been read and that point to my mind is this. The article as I recollect it recites that the original law in this State has been productive of endless litigation. It hardly lies in the minds of the people of the State of California to say that "endless" litigation has been produced. That is not a suitable term to use in connection with the subject. We should leave out the word "endless." There have been more ejectment suits in the city and county of San Francisco than there have been in the rest of the State of California. This arose in the early days in San Francisco. These suits about water rights have arisen in the same way. If two people claim the same thing it has to be decided somewhere. It may be proper to say "that the conditions existing in California have resulted in expensive litigation."

MR. CORNISH: I think I agree with the last speaker in reference to the wording in this particular clause. We are getting away from the subject. We all agree that there must be disagreement in the matter of water rights and some of us think that the water can be measured. The older rights are not to be disturbed, the vested rights are safe. The question is can we introduce a method of measuring this water and distributing it which will simplify these suits? We have in the history of the older States the disputes and litigation that occurred as a result of metes and bounds and afterwards the boundaries were established by skilled experts.

THE CHAIR: The question is on Judge Denson's motion that the club does not agree with Article One.

Some informal discussion indicated a disposition to amend rather than reject, and the motion to reject was dropped by common consent.

MR. CORNISH: I move to amend the paragraph by inserting the word "unnecessary" before "litigation."

Lost by a vote of nine to six.

MR. CUSHING: I move to so amend the paragraph that it will read as follows:

"Under the method prescribed by California law for acquiring title to water, or the use of it, much litigation has resulted."

Carried.

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## DISCUSSION AND ACTION AT MEETING OF NOVEMBER 8th, 1905.

THE CHAIR—For the information of members present the Secretary will read the statement of facts as found by the Section and its recommendations.

The Secretary reads. (See pages 18 and 25.)

THE CHAIR—The question is shall the Club adopt the findings of fact as set forth by the Section as the findings of the Club? When the subject was last before the Club the first paragraph was agreed to with some amendment. The question is upon the second paragraph of the findings.

The findings were then considered seriatim, with critical attention to the language and some verbal amendments. As finally corrected they were adopted as follows as the findings of the Club:

### THE FACTS AS FOUND BY THE CLUB.

1. Under the method prescribed by California law for acquiring title to water or to the use of it, much litigation has resulted.

2. California has absolutely no State administrative system for assuring the equitable distribution of water in accordance with the rights of each user and the public, in which respect it differs from all countries outside of the United States where irrigation is an important factor, and from most of the States of this Union.

3. Titles to water, or the use of it, have been commonly determined in California courts in suits between minorities of claimants or users of water from a common source, to which the State and all other users have not been parties, with the result that decrees often have been, and future decrees are likely to be, made that do not finally determine the rights in litigation, although much time and money have been wasted in the vain effort. The mere cost of litigation alone has been an enormous drain on the resources of the land owners.

4. The public, which is always interested in water suits, has seldom, or never, been represented at the trial of such actions.

5. Consequently few water suits in this State have ever settled any issues in such a way that they cannot again be raised, and few titles to the use of water are beyond question.

6. There is enormous waste of water on many irrigation systems, which cannot be prevented under existing law.

7. The irrigation law of California cannot be ascertained by a study of the statutes, but must be sought in a long series of decisions in which the Supreme Court has endeavored, according to the lights of its changing membership, to reconcile the irrepressible conflict between the common-law doctrine of riparian rights and the actual needs of irrigationists in California whose rights are not riparian. The law has been, and is, in a state of flux, and is decided by the logic of Judges rather than by the statutes of the Legislature. Few know what it is to-day, none know what it may become to morrow.

8. There is not in existence any reliable record of legal titles to the use of water. County records show "claims" which may or may not be valid, and adjudications within the county, but nowhere are the records of river systems (which usually run through more than one county) concentrated.

9. The history of the use of the water of each stream is a history of ruinous litigation.

10. This litigation includes not only litigation over surface water, but over subterranean streams and percolating waters.

11. Litigation is not diminishing, but, on the contrary, is increasing, as stated by Chief Justice Beatty, in a letter published in 1904, in which he mentioned the increase of water litigation as one important reason for establishing district courts of appeal, to relieve the Supreme Court.

12. In Southern California the right to the use of surface waters has been fought out and fairly well settled as between individual claimants, and litigation over underground waters is well started. There are still remaining public interests in water now wasted, either in preventible seepage or excessive irrigation.

13. In the upper San Joaquin Valley litigation over surface waters is still active, and litigation over underground waters has hardly begun.

14. North of Madera County litigation has hardly begun. If nothing is done there will probably be far more litigation in the North than there has ever been in the South.

Paragraph 15, adopting the entire report of Mr. Reed—see pages 18 to 25—was passed for want of time for a critical study.

In connection with paragraph 14 the following discussion occurred:

MR. ADAMS: Since that was prepared, something like a year ago, more or less, it has been brought to my attention that by compromises among the people on King's River and elsewhere, litigation has perhaps been reduced, and that paragraph may now describe the situation too strongly.

JUDGE SHAW—If I should state my own views, I should think both this and the preceding paragraph were incorrect. I have tried two very long water cases in Upper San Joaquin Valley. That was some five years ago. In one of those cases (Mr. Willard will bear me out) all of the then existing claims to the waters of the river involved in that litigation were settled.

MR. WILLARD: That is a fact. So far as I know there is now no dispute over any rights on that river.

JUDGE SHAW: Subsequently I had the pleasure of trying another case in Fresno County which settled the rights to most of the waters of King's River. I do not think it is true that water litigation in Upper San Joaquin Valley is increasing; I think it is decreasing, and will continue to decrease—unless the same thing should happen which has happened in Southern California. There is a certain stream there flowing from 500 to 1000 inches of water, and according to my information and knowledge all existing rights in that stream have been settled three times within the last thirty years. Now, whether another crop of claims has grown up since the last suit was settled, I do not know. And it may be possible that another crop of claims is growing up in the Upper San Joaquin Valley.

THE CHAIR: The question is now upon the adoption of the conclusions of the Section as the conclusions of the Club.

The conclusions were taken up seriatim, and with one verbal change were adopted as the conclusions of the Club as follows:

## CONCLUSIONS OF THE CLUB.

1. Great caution should be observed in legislating on the subject of water rights, so as not to interfere or seem to interfere with rights now vested, in order to avoid the opposition of owners of vested rights to the use of water.

2. The foundation principles of any State definition of water rights are (1) the recognition of the validity of existing rights (2) the determination by a State irrigation or public waters department of all physical facts, such as the flow of streams, the diversion by ditches, the areas irrigated, and the extent of beneficial use, essential to any complete definition of rights, and (3) the judicial establishment of rights, at the instance of the Attorney General, on the basis both of the physical data collected by the State irrigation or public waters department and of the testimony regarding the time of use taken by the court or courts provided that every proceeding to establish rights shall consider every other right, both public and private, on the same stream.

When one turns to the question of a practical working method by which future rights to water for irrigation may be acquired under public supervision and subject to reasonable public control, he finds certain well-established principles that have been worked out, although not wholly put into effect, by the experience of some of the Western States, particularly Wyoming, Utah and Nebraska. Among these are:

(1) That no diversion from any stream or water source should be made without specific authority from the public, and that, if for irrigation, such authority should be given for only so much water as is necessary for such irrigation, provided, that use alone, without specific authority from the public, shall in no wise establish a right.

(2) That all grants to water shall be made with reference to particular tracts of land, to be legally described in each grant to water, that transfers of right shall not be permitted to the injury of other legal users of water, and that no transfer shall be binding except when approved by public authority represented by a court or State irrigation administrative officer.

(3) That no grant of right to a stream shall be made unless there is unappropriated water available in such stream to supply such grant; and

(4) That all grants to water from public streams shall be subject to public control exercised by State administrative officers so organized that each independent stream shall be considered as a unit, and upon which each right shall be administered with reference to every other similarly granted right on the same stream.

THE CHAIR: The question is now upon the adoption of the final recommendation of the Section. The Secretary will read.

The Section is of the opinion that it would be wise to frame a law for submission to the next Legislature on the lines outlined above, and recommends that the Section be instructed to prepare such a bill to be submitted to the Club for its discussion.

THE CHAIR: Judge Shaw's opinion is invited on that recommendation.

JUDGE SHAW: I am afraid, if I should express my opinion in regard to this whole scheme, I would have to condemn it all. I do not know that I really want to go into the discussion of the subject. I will confine myself simply to a statement of my opinion, and it is this: It is useless to attempt to frame a law of that kind in California. Some suggestions have been made about the inviolability of riparian rights. People do not understand the matter of riparian rights, and the courts have not fully defined it in all cases, perhaps. But the fact that riparian rights do attach to lands adjoining a stream, and that those rights vest in the owner of land as soon as he acquires title, has been established by decisions in this State after a most exhaustive consideration of the cases by the Supreme Court, and with the aid of probably the most eminent lawyers in the State. In the case of Lux against Haggin decided about eighteen years ago—and it has been settled by repeated decisions since—if anything can be said to be settled—it was held that riparian rights in streams do attach and become part of the land on each side of the stream. So that, so far as those rights are concerned, it is a fact that they are all private rights, belonging to individuals. They are vested rights, and under the constitution of the United States and of this State it is impossible for the State to interfere with or to disturb those rights.

In Southern California even the waste water that runs off in heavy storms has become the subject of private ownership, and any scheme of public distribution would be absolutely fruitless. I think I may say, further, that as far north as Madera County all possible rights by appropriation that are of any practical value are now in private ownership. From what I know of these streams—and I have had some considerable acquaintance with them, both by living there and by trying several important cases in regard to them—there is a possible chance, I might say a possibility, or more than a possibility—a probability—of getting additional water from what they call impounding dams to hold the water that would run off, the great excess in the high water period. The water can be stored in this way and used to increase the flow during the irrigating season. Now, whether such water ought to be in public ownership is a subject for very serious consideration. My reading on the question and my study of the experience of other States lead me to believe that it is generally a very unwise thing to do. Read the history of the United States of fifty or sixty years ago. At that time, there was a great movement in the direction of public enterprises. Canals were made at great expense in Ohio and in Indiana and large amounts of public money were spent, with the result that those canals had to be abandoned, and the money invested in them was lost. The people there were so much impressed by that experience that when some of them emigrated from those States into the State of Kansas they put in their constitution there a clause that the State should not engage in any public internal improvements, and that clause is now in the way of the opposition to the Standard Oil Company in the State of Kansas. The

Erie Canal is the only instance I know of where such a venture has been a success. There are too many chances for graft—of which we have heard something lately—and too much opportunity for improvidence and waste of public money.

This paper recommends that this State shall create a system by which all the available water which the State can hold shall be put under some general system of supervision. It is a good scheme on the face of it, but as I have already stated, in Southern California, south of Fresno, I do not think there is a thing it can operate on. In the northern part of the State, it is possible it might be a good thing. In that part of the State irrigation has been but little used. There is not the same need for irrigation as there is in the southern part of the State.

We have made pretty serious innovations on the riparian right in our jurisprudence. For instance, at common law, the law, as we understood it, was that there was no right to irrigate; the riparian right did not include the right to irrigate land, because it was only the right to use the water as it passed by, and irrigation consumed the water and it did not pass by. That right to irrigate has been added by the decisions of the courts in this State to the riparian right. We have broken in upon the common law rule and said that each owner can use a reasonable amount of water to irrigate his land, and so long as the owner below, on the stream, has a reasonable amount to irrigate his land, he cannot complain of the owner above. That has been put into practical operation in one or two cases. In the case of Harrison against Harrison, the court made a division by allowing one man to use all the stream for four days and the other owner (there were only two owners, it being a small stream) to use the water for the succeeding four days, and so on in alternation. All these innovations have been made upon riparian rights.

It is the general impression in this State that no man can tell what the law on water rights is, but that it is extremely uncertain and difficult to ascertain. I do not agree with that proposition. I am free to admit that at one time it was so; but with the exception of one or two points, most of the questions of any consequence concerning water rights—I mean private rights—have been definitely settled. If you will pardon me for drawing on my own experience, I will say that in a case in Kern County, a case which I have already referred to, and which Mr. Willard will remember, the trial took five weeks, and practically all of that time was spent in hearing the testimony of witnesses. I do not think all the arguments in the entire case lasted an hour all told, and the argument on the final hearing was chiefly upon questions of fact. It was practically admitted that there was no question of law in the case. Another case which I tried in Fresno took seven weeks, all the time being consumed in the taking of testimony. There was no argument on any question of law in the entire case. I think it can be said that the law of rights in water by appropriation is practically settled in this State.

MR. ADAMS: I wish to ask whether the law is settled in such cases as that down near San Jose—the Coyote Creek case.

JUDGE SHAW: That is a question which is a little different in its character. Most people think that is a question of law. It is not; it is a question of fact. It has been definitely decided in this State what the law is. When you once determine that the waters that are attempted to be diverted are really waters of Coyote Creek and have been used by people below, they cannot be taken from them. But the difficult question of fact remains as to whether they are the waters of Coyote Creek, and there is no commission or scheme of State distribution of water that can take that question out of the courts, nor that can succeed in settling it beyond controversy.

MR. ADAMS: I suppose that under an administrative system such as is suggested, those persons who propose to disturb what apparently are the existing conditions would have the burden of proof put upon them, instead of the present users of water being compelled, as now, to enjoin those who attempt to disturb existing conditions; and that seems to me to be fairer.

JUDGE SHAW: Upon that point, I will say this. If this State, before any appropriative rights were acquired, had withheld all waters from private ownership, and had undertaken a system of distributing all waters under State management, that undoubtedly would have been much the better system. That is the system in use in countries where water is scarce and requires supervision., Unfortunately California was settled by people who came from a country where water was to be avoided rather than sought, and they did not perceive the value of it, and they allowed it to be acquired by private owners. In Colorado they discovered this important fact a little earlier in their development than we did, and managed to secure a good many water rights from private ownership, and the result is that there they have some of these administrative systems which are successful. But I doubt if they could be made successful in this State.

Another thing which people do not generally understand, but which they very soon learn if they go into water litigation, is that there is no species of property which is so elusive and unstable as water that is running. Of course, you can do as you please with water that is a pond, but running water is a different thing. It never stops; it keeps going. You can't dam it up successfully; it will rise above the dam. Another thing which prevents the stability of any water rights is the extreme variation in our rainfall. A certain amount may be at one time fixed as the maximum flow of a stream. Then there will come seasons for a series of years when the maximum flow of that stream is only half what it was before. Somebody has to suffer, of course. And there probably will follow another series of years when the maximum flow will be a third or a fourth more than before, and then some new rights will be acquired, or people will think they have acquired them. Then comes a series of dry years; and there springs up a new crop of litigation. That cannot be avoided. It is not because of the imperfections of our laws; it is because of the variability of our rainfall and the imperfections of human nature. People see water flowing by and they think they have a right to it, and when the heavens do not favor us with sufficient rain, they do not see why they don't still get as much water as before; and that is especially true because our citizens generally come from the East, where they have too much water, and they don't think there is any such thing as exhausting the supply of water; they believe it is something like the widow's cruse of oil.

Perhaps I have been rather rambling in my talk, but the conclusion is that in my opinion this whole scheme of State supervision and State distribution of water is largely chimerical and is unsuited to this State, owing to our natural conditions and the fact that all our water rights are in private ownership.

MR. ADAMS: I want to ask the indulgence of the Club for a few minutes. Of course these points which Judge Shaw has so interestingly presented have been under pretty thorough discussion for the last year or year and a half, and I do not intend to misuse the time of the Club by a discussion which could serve no useful purpose. Although I did not prepare the paper under discussion I was instrumental in having it prepared, and the occasion of it was just this. Two or three years ago there was an attempt made in good faith by those who practically understood our present conditions and were more or less familiar with all those difficulties of which Judge Shaw has spoken, to see whether by any possibility the northern part of the State and the lower San Joaquin Valley—

especially in reference to the flood waters—could be saved from the misfortunes attending the litigation through which those rights in Southern California had been settled. A bill for this purpose was prepared by very competent men, was presented to the Legislature in good faith, and was not fairly used. The subject was never discussed upon its merits, and frankly, the discussion was prevented by tactics which were not worthy of some of the men who were engaged in them—from Southern California. Now, the idea of this Club, and of the Section which has had this matter in charge, has been to see if we could not bring about harmony on this question, for the benefit of the people of the State.

JUDGE SHAW: I want to add one thing. I do not intend to speak for the region of the State in the Sacramento Valley. I freely concede that there may be some rights there which may be conserved.

MR. ADAMS: I understood you to speak of Southern California, and I may say this, merely for the benefit of Judge Shaw, that by correspondence and by visits some harmonious feelings seem to have been raised, so that there is now a disposition, I believe, among the leaders of opinion both North and South, to have this question considered in good faith. It may be we shall find that nothing can be done. It may be we shall find that a good deal can be done as regards flood waters and as regards the Sacramento and San Joaquin Valleys—though in the Sacramento Valley we are going to have far more difficult questions to deal with in relation to the conflict between navigation and irrigation. So it has progressed to this point, and this Club has now agreed upon a statement of fact, and has also agreed upon certain principles upon which a law ought to be drafted. Now the question is, shall we refer this to the Section to get down to detail, to see whether or not, under the Constitution of the State and of the United States, anything can be done, to see whether it is possible to prepare a brief bill which will raise but two or three fundamental questions before the Legislature, and not be subject to attack on detail, and which will accomplish the purposes which we have already agreed ought to be accomplished.

As Chairman of this Section, although I personally am not seeking the work—we have five times as much as we can do—I should be very much disappointed if, after all the time this Club has given to this subject, we should now stop at the last minute and say, this ought to be done, but we will make no effort. The Section, in order to follow up the report which has been approved, must have the instruction of the Club, and I trust that the Club will give that instruction, in order that they may with due authority proceed to see if what we all wish could be accomplished cannot be accomplished, or some part of it may be.

THE CHAIR: Mr. Gregory's views on the subject are invited.

MR. GREGORY: I don't know that I can add anything to the discussion. It seems to me, on reading this report, that possibly you ought to make it somewhat more definite. At the present time a man who appropriates water owns that water. If he has actually appropriated it and taken it it belongs to him, just the same as if he had a bucket and put it in it, and carried it off. Now, whatever water you put under the control of the State you subtract from the private ownership which now controls it, to that extent. As Judge Shaw has said, it seems to me that in this report we should consider the question of vested rights. To say that a commission may now be appointed to control water rights in California is about the same as saying that you may appoint a commission for the purpose of controlling the public lands of the State of California.

MR. ADAMS: Do you understand that this discussion only contemplates the control of water which is not being controlled by any one?

MR. GREGORY: Yes, I so supposed. The question concerns vested rights. No—I would not yield that point. If a commission were to be appointed it would have control over vested rights to a certain extent. A State Water Commission which should be given the power of regulation over a vested water rigbt, I think, would not be constitutional. Then the question arises whether such a commission would not require a constitutional amendment. I think we ought to know that point definitely, as to whether tbe Legislature has power to appoint any such commission.

MR. ADAMS: If you would put that in definite form and present it as an additional instruction, the Section would be glad to have it.

MR. GREGORY: I would hardly undertake to formulate a constitutional amendment on my feet.

MR. ADAMS: But if you put in definite form as an instruction to the Section, we would procure the best legal advice on it.

MR. GREGORY: I merely make the suggestion. If a commission should be given the power of regulating the entire waters of tbe State, whether such a commission could control at all the appropriated waters, should be considered. I think such a commission would be of great value. It would determine what notices had been posted, those that are now valid and those that are not. Some time ago a man called on me who said he desired to appropriate all the running water of the State of California, and accordingly he sent out men to every stream in the State of California, with printed forms of appropriation of 50,000 miners' inches, and they tacked that notice up on the bank of every stream, and recorded it. I think you will find that appropriation in examining water titles in this State.

Now, such a commission would be of value in telling a man who came to a stream in good faith, desiring to use the water for irrigation, as to whether the notices were valid and bona fide.

MR. ADAMS: Wouldn't it prevent water titles from being clouded by illegal claims?

MR. GREGORY: I tbink so, unquestionably. They could issue a certificate of title to water. At the present time anybody who wants to appropriate any water for the purposes of electrical transmission of power—and that is the great question now—is very much in doubt as to whether the waters have already been appropriated. He will find innumerable notices, and the result is that he is apt to abandon his attempt. That would be the value of a commission. They could issue a certificate by which such a man could have his title clear.

MR. DENMAN: Would you give tbe commission judicial powers?

MR. GREGORY: That involves a further question, which I have in my own mind, as to whether or not it will require a constitutional amendment to confer upon such a commission power to determine tbese matters. When we had the Australian Land Title question before the people, the question was raised whether the Australian system of transfer could be enforced, whether the power could be given to that extent. And tbis question is analogous to that.

MR. ADAMS: What was the decision in that case?

MR. GREGORY: So far as I know, tbat question—although it has been held in Illinois that the law was constitutional—has never come up in this State. We have the law, but no one has attempted to register any land under it.

I would merely suggest, Mr. President, that there be something of a more definite character in the report, on the questions—first, whetber or not such a

commission would have any right to interfere with or control rights already acquired in running streams; secondly, as to whether or not it is going to require a constitutional amendment to give that commission some judicial power.

Those are the questions of importance which are in my mind at the present moment.

The other suggestion I have to make is regarding a new question in this State, and that is the question of surplus or storm waters. Litigation over percolating waters and underground waters, as you have said, is not uncommon; but there has been hut one decision in this State on the question of surplus or storm waters. That, it seems to me, is going to be a subject of litigation in the future.

MR. ADAMS: I understood that to be settled. I think Judge Beatty once told me that it had been decided that whoever got hold of the flood waters first, they were his. If that is the decision, that settles it.

MR. GREGORY: There is one case, Fifield against Spring Valley Water Works, which has so decided. And the other question, Judge Shaw will know whether there is any case on that.

JUDGE SHAW: No case on that.

MR. GREGORY: Take the case of a man who is looking up the question of electrical transmission of power. It is found that it is necessary to impound the waters up above, that run down these streams. Query: Who owns that surplus water? Can we turn the surplus back?

All these questions are new in this State, although they have been decided in Colorado and in Arkansas. I suggest that in that report there should also he something on that question—that they should submit a law on this subject of surplus or storm waters.

MR. ADAMS: Won't you prepare at your leisure a set of additional instructions?

MR. GREGORY: If I write you a letter, will that be sufficient?

MR. ADAMS: Yes.

THE CHAIR: I suggest we hear from Mr. Willard.

MR. WILLARD: I don't know that I have anything to add to what Judge Shaw and Mr. Gregory have already said. In fact, I was very deeply interested in what Judge Shaw said ahout the experience he has had and the views he has on the general suhject of water rights in this State. In my experience at the bar I have heen connected with considerahle water litigation, and necessarily of course have upheld the cause of private rights, and I was very glad that Judge Shaw expressed himself as he did, hecause I felt that in view of the existence of private rights in the State, those rights will have to be protected, under the Constitution, and that any legislation that is now enacted can deal solely with waters which have not hecome the suhject of private rights, and that must be considered in any discussion of the question. And it was for that reason that I personally had some ohjection to some of the recitals of fact contained in that report, which was made the basis of the recommendation of the Section. In other words, it seems to me that if such legislation is to accomplish anything, it must start in with an entirely new field. The litigation, which unfortunately has heen very expensive in this State, on the subject of water rights, deals solely with private rights, and I helieve cannot in any way be remedied now, hy any legislation or hy any commission. The only thing that a commission can accomplish is to make some equitahle distribution of the right that still remains in the puhlic to the waters of the State. So far as the litigation over private rights is concerned, I don't

think that anything can be done on that now, to stop it. I think also, and in that I agree very heartily with Judge Shaw, that the litigation over private rights in this State inheres in the nature of the property right which has been the subject of the litigation. It is not the fault of our system of law. It is not the fault of lawyers, or of litigants even. It has been absolutely unavoidable, from the fact that water in its running state is an intangible property right; it is something that cannot be reduced to possession. The litigation that has arisen, in my experience, over private rights in this State has been not so much owing to any uncertainty in the law, but owing, in the first place, as Judge Shaw suggests, to the uncertainty of the facts, and in the second place, to the quality of human nature, which makes it absolutely necessary for people to protect their rights by litigation against encroachments of other persons claiming similar rights. Rights in water, more perhaps than any other property rights, need the protection of the courts, simply because they are so easily taken away from the people in whom they are vested.

MR. ADAMS: I wish to ask Mr. Willard if in his opinion anything could be done towards the prevention of litigation by these expert public authorities, who have impartially studied the facts, investigated the facts, bringing litigants before them, bringing them together, and trying to arrive at a settlement in the light of the facts thoroughly exploited and impartially studied.

MR. WILLARD: That might be. My attention has never been called to that. It had simply occurred to me that the definition of rights in running water is only the first step. In my experience, the encroachments by defendants upon the rights of plaintiffs have been very nearly of the character of wilful encroachments, simply because the water was there and they had the opportunity to take it.

MR. ADAMS: In Utah, Wyoming, Nebraska, Idaho and Oregon they have or are considering new legislation which would put that burden of distribution upon a public official, just as you have in the water systems below, in Mexico, where they have such a public officer and give him that authority by law. That is one of the means by which they hope to prevent litigation.

MR. WILLARD: If that matter could be worked out, so that everybody who had a right in the water of a stream would be guaranteed the protection of that right—if that can be done, I think that Government method might be successful.

I have no intention of opposing any report which would recommend some form of legislation. As I say, my experience has not been directed to that sort of thing at all. It has been limited to the assertion of private rights. But such Judges as Judge Shaw himself and Judge Wellburn, of the United States Court in the Southern District of California in my judgment have done a great deal and do a great deal, toward diminishing litigation. In the case which Judge Shaw himself suggested, that was a case where it was absolutely essential that rights be defined. The use of water there went back for twenty or thirty years. For the purpose of defining those rights, it was necessary to go back in the recollection of individuals that length of time, and the decision which was rendered in the case cannot be better stated than to say that all parties to it accepted Judge Shaw's decision as final without any further procedure or appeal.

THE CHAIR: May we hear from Professor Marx on this question?

PROFESSOR MARX: Mr. Chairman, I have very little to add. I was present on a former occasion when there was discussion on the bill drawn by the first Irrigation Commission. There is one thing that interested me very strongly in what Judge Shaw said, and that was in those cases that came up in his experience it was not a question of law at all, but a question of fact. If you will turn to the paragraph which Mr. Adams quoted a while ago you will see that that commis-

sion or department, or whatever you choose to call it, that is to be organized, is to be organized largely for the purpose of determining facts. In all water right cases you must have certain definite information with reference to flow of streams at different times, in reference to ditches which have been taken out, and it seems to me that is a mater which might well be entrusted to State officers, to determine those facts. After those facts are determined it seems to me feasible that the men interested shall be brought in, the facts laid before them, and then there ought to be no cause for litigation at all; the matter could very readily be settled on the facts.

You have no such authority in the State at the present time. At one time you had a State Engineering Department, but for some reason or other that department was abolished. You have made another beginning in the same direction within the last three years or so in co-operation with the United States Geological Survey.

You have distinctly stated in the opening paragraphs of the report that there is no intention to disturb vested rights. We have been informed by Chief Justice Beatty and others that we could not take vested rights. But a commission so organized could find out what could be done with the flood waters of the State. As Mr. Gregory has said, we don't know whether there are any flood waters that are not in private ownership, or not. We must determine those facts. We have no means of determining them now, except indirectly by such court decisions as are necessarily made. They may settle controversies as to A, B, and C on any given stream, but if F, G, and H are also interested in that stream no decision as to A, B, and C will bind F, G, and H. Is that not so, Judge Shaw?

JUDGE SHAW: Yes.

PROFESSOR MARX: You can't settle the questions in that way. The object of the bill I have referred to was to provide for a commission of some kind, I believe, and I think it was held by Judge Beatty that such a commission could not be given judicial powers, but could gather the facts. The bill could provide that all the riparian owners and all those who obtained water by appropriation on any given stream could be brought into court and the matter settled between all of them.

The Judge referred to Colorado, and seemed to think that matters there are all settled. They have had a great many judicial decrees there. I know from my own experience in Colorado—I had occasion to look into certain matters connected with power plants there—that on most streams the court decisions give water by judicial decree to the owners on those streams in excess of the waters that flow in those streams. That is a judicial decision, but I think the laws of nature are against the carrying of it out. And the same conditions exist in the State of California, as Mr. Gregory has said, where appropriations have been filed far in excess of the actual flow. I had occasion to look into that in detail on the Salinas River and one or two other streams in California. You certainly have a very unsatisfactory state of affairs in California. If, as Judge Shaw says, all the water is in private ownership, I admit that there is no necessity of our attempting to do anything. But if, as some believe, there are flood waters left, I think there is still room for the work of a commission of that kind. But it must determine the facts in the first instance. And it seems to me that is the main thing to work for, that some kind of a State Engineering Department be organized for the purpose of determining those facts. It will take time to do it, and it will take a good deal of money. A great deal of objection was raised on that score. Unless the people of the State are willing to do that, I don't think there is any necessity of doing anything.

THE CHAIR: May we ask Professor Wickson to give us his views on the use of water on this Coast?

PROFESSOR WICKSON: I don't think I have anything to say. Unquestionably there is in some cases a great waste of water, but I don't think that has a very close relation to this subject.

THE CHAIR: May we hear from Mr. Hutchinson?

MR. HUTCHINSON: I have nothing to say, though I use a good deal of water.

THE CHAIR: Has Mr. Denman anything to say?

MR. DENMAN: I am in Mr. Hutchinson's position—perhaps a little worse.

THE CHAIR: Gentlemen, the question is now before you, what shall be done with it? In addition to its conclusions, the report contains this paragraph:

The Section is of the opinion that it would be wise to frame a law for submission to the next Legislature on the lines outlined above, and recommends that the Section be instructed to prepare such a bill to be submitted to the Club for its discussion.

What shall be done with that?

JUDGE LAWLOR: Has Mr. Nye been asked if he has anything to suggest?

THE CHAIR: We would be glad to hear from Mr. Nye.

MR. NYE: Mr. President, I don't believe I have anything that would be of interest.

MR DENMAN: Mr. Gregory's suggestion was that the Section investigate the powers remaining in the State to regulate the user of rights acquired already, to regulate the user of rights now vested in private persons.

Now, isn't there something in our series of recommendations that seems to preclude us from that investigation? Haven't we somewhere said that we would not go into the question of any rights of any private persons? I think it is the third or fourth paragraph.

THE SECRETARY: Paragraph 1 is: "Great caution should be observed in legislating on the subject of water rights, so as not to interfere or seem to interfere with rights now vested, in order to avoid the opposition of owners of vested rights to the use of water."

MR. DENMAN: Would that preclude the possibility of the investigation suggested by Mr. Gregory? It is possible that the State still has some powers of regulation, not so serious as to amount to an appropriation of property. Massachusetts has some laws regarding ponds for the propagation of fish, that almost take an easement from the property on which the backed-up waters of the ponds encroach, and it is held that the State has power to permit the overflow water in those fish ponds to cover the portion of the land that it overflows, and it is not called an appropriation of property; it is called a regulation of the rights of the parties. It may be that on investigation it will be found that the State has powers of regulation which do not amount to appropriations of property. If that is the case, should not the Committee consider it, and would not the first Section of the Conclusions preclude the possibility of making that investigation?

MR. GREGORY: I do not want to be understood as saying that such a law would be unconstitutional; but it occurred to me, as Mr. Denman suggests, that there is a very great difference between regulating and taking a right away.

The Legislature may regulate vested rights in certain cases. Whether or not that could be done with water rights, I do not know; but it seems to me it is

worthy of very serious consideration. Of course, if that can be done, if this commission can regulate water rights on a certain stream, you have solved the most difficult part of this entire preliminary work, and I merely invite the committee's attention to the careful consideration of that question.

THE CHAIR: Is it your desire that these suggestions should call for a constitutional amendment?

MR. GREGORY: I don't think so; I think that the Constitution is all right now.

MR. ADAMS: I will say that this Section has had constantly in mind not so much the ideal as the possible—the possibility, in other words, of the passage of an act—and we have considered, in view of the experience of three years ago, and have endeavored to make it so plain that we do not intend to interfere with vested rights in any way, that we should perhaps ward off the opposition of those people in the State who know most ahout irrigation and who will therefore be best listened to on the subject and it is in that respect only that I doubt the wisdom of giving these instructions that Mr. Gregory has suggested, but would rather that should be presented in an entirely separate communication. My conviction is that if we do any tinkering with vested rights and attach the suggestion on to this report, we should arouse the opposition we think we have allayed now, from the southern part of the State. It is a matter of strategy. The Section says to them: "We are not going to touch your vested rights," and if we propose a bill which in some way deals with such rights—it is a question of good faith. We cannot get everything we would like.

THE CHAIR: Any further discussion desired on the subject? If not, what shall be done with the paragraph?

On motion, seconded, the last paragraph of the report was adopted as read, and the Section was instructed to prepare a bill.

[NOTE.—While votes are taken on these questions in order to secure definiteness in the discussion, the by-laws of the Club provide that they must be taken only as expressing the opinion of those present and not, necessarily, of the entire Club. Authority to use the Club name in promotion of a policy, can be acquired only by a different procedure under which all members have the opportunity to vote.]

Adjourned.

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NOTE—Although this discussion was begun in 1904, and the number 6 in the Club Transactions given to it, it was not finished until Nov. 1905. The following numbers of the Transactions are included in the first volume, each of which, except numbers one, seven and twelve constitutes a monograph and discussion on the subject of its title. Until editions are exhausted copies of any number of the Transactions are mailed to any address on application.

The following is a list of the Transactions thus far published.

No. I. The Commonwealth Club, Its Origin, Purposes and Organization. This number also contains a paper by Geo. W. Dickie, on the Relations of Employer and Employed, a reply from the Union Labor Standpoint by Edward F. Adams—both reprinted in number IX, and a paper on Publicity in Municipal Affairs, by John P. Young.

No. II. Civil Service Number.
No. III. Taxation Number.
No. IV. Swamp Land Reclamation.
No. V. Direct Legislation For State Purposes.
No. VI. Regulation Of Water Rights.
No. VII. Report Of Club's Progress.
No. VIII. Penology Of California.
No. IX. Relations Of Employer And Employed.
No. X. Hospital Situation in San Francisco.
No. XI. The State Charities Of California.
No. XII. Report Of Club's Progress. (Reprint Of No. VII With Additions.)
No. XIII. Government Regulation Of Freight Rates.

# APPENDIX.

## I. Objects of Irrigation Reformers.

The irrigation laws which are regarded as models by most of the advocates of better methods of dealing with the subject are the Wyoming law and the so-called "model law" drafted by the Reclamation Service and adopted with more or less modification in Oregon, Idaho and Nevada. The California Commission bill printed, in part, below, followed the Wyoming law in its fundamental features, and will serve to indicate the general character of the Wyoming law and the Reclamation Service draft, whose principles are the same.

All these laws seek to bring about conditions in this country similar to those which obtain in older irrigated countries and they all tend to conflict, or may be made to seem to conflict, with provisions of State constitutions. The Dominion of Canada has enacted a law similar in many respects to the Wyoming law, and it does not lead to serious litigation, because in Canada the Parliament is supreme. Any obscurity in a law, of course, has to be settled in court, but when the law has been interpreted that is the end of the matter. There is no "Constitution" to override it. This eliminates nine-tenths of the litigation which would otherwise arise and which is inevitable, in any of the United States, upon the enactment of any new law on any important subject.

## II. Basic Features of Recent Laws.

The essential features of all these laws are few and easily understood. They are:

1. Explicit recognition of all vested rights to water or the use of it.

2. A declaration that the distribution of water for irrigation is a public service, and its beneficial use a public use, both subject to public regulation.

3. A declaration of public ownership in all unappropriated water.

4. A declaration that beneficial use is the basis, measure and limit of the right to water.

5. A prohibition of any new diversion except by special permit by public authority, which will be given only after affirmative proof that unappropriated water remains in the stream.

6. The recognition of the principle that in all appropriations of water the first in time is the first in right.

7. The making all water diverted for irrigation appurtenant to the land to which it is first applied, the title to the use of the water passing with the title to the land, and inseparable from it except by permit similar to that required for original diversion.

8. The creation of a state administrative system with such local ramifications as may be deemed necessary, whose officials shall be charged with the duty of gauging streams, issuing permits for diversions, compiling and maintaining a record, in one central office, of all established titles to water, and overseeing the distribution of water according to the established rights of all parties concerned.

This last item of authority necessarily involves the exercise of what is really judicial authority. For example, beneficial use being the basis, measure and limit of a water right, in time of scarcity a junior appropriator might claim that an appropriator senior to him was using water in excess of his needs and therefore in excess of his rights. In such case the administrative officer would necessarily have to decide the question, because he would have to make an order, to be executed on the spot, as to the relative amounts of water which each contestant should receive, and such order would stand until otherwise ordered by a court. It is said to be the experience that these administrative orders being usually just, are accepted by contestants and litigation is thus prevented. In a multitude of cases the general authority to distribute water according to the respective rights to all parties

taking water from a common source would involve making an administrative decision upon those rights which may not have been adjudicated. In such cases the orders stand until otherwise determined by a court. In Wyoming the State Board of Control was expressly charged with the duty of making an administrative settlement of all claims to stand until set aside.

The foregoing are the essential features of the Wyoming law, and of the bill drafted by the Water and Forest Society Commission.

## III. Reclamation Service Bill.

The following is an abstract of the irrigation law proposed by the United States Reclamation Service:

From Portland Oregonian.

Briefly stated, the code suggested for adoption declares that all unappropriated waters not navigable belong to the public and are subject to appropriation for beneficial use; that beneficial use shall be the basis, the measure and the limit of the right to the use of water, and that beneficial use is a public use, and any person, corporation or association may exercise the right of eminent domain to acquire any right now or hereafter existing to the use of water for beneficial purposes, or to acquire right of way for the storage or conveyance of water for beneficial use, including the right to enlarge existing structures and use the same in common with the former owner. The proposed law provides for the appointment of a State Engineer for a term of six years, the appointment to be made by the Governor and approved by the Senate. The Engineer is to receive a salary of $3000 a year, and expenses, and may appoint an assistant at a salary of $1800 a year, and expenses, and may appoint other assistants or purchase supplies at an additional cost of $2000 a year. The state is to be divided into water divisions, probably a half-dozen being necessary, and one Commissioner is to be elected by the people from each division. The Commissioners will receive $10 per day each, with traveling expenses, the pay not to cover more than 100 days in any year. The State Engineer shall divide the water divisions into water districts, and the Water Commissioner shall appoint a Watermaster for each district, who shall receive $4 per day and expenses. Salaries of Watermasters are to be paid by County Courts, but the expense is to be charged as a tax upon the property of water users and ditch owners, in accordance with the distribution of the water.

The duties of these several officers are not very specifically defined, but it is stated that the State Engineer shall have general supervision of the waters of the state and of the measurement and appropriation thereof. Each Water Commissioner shall have supervision of the apportionment of water in his division and shall keep the records relating to his division. Each Watermaster shall have immediate charge of the apportionment of the waters of his district and so regulate and control the use of water as to prevent waste. Appeals lie from the Watermaster to the Water Commissioner, thence to the State Engineer, and thence to the Circuit Court. The State Engineer must make a hydrographic survey of each stream in the state, beginning with those most used for irrigation, and immediately upon the completion of the survey upon any stream the Attorney-General must begin a suit to adjudicate the rights of all parties to the use of water in such stream and to determine the amount of water unappropriated to a beneficial use. The costs of suit and surveys must be paid by owners of water rights in proportion to the amount of water right allotted.

This proposed law also provides that any person desiring to acquire a right to the use of unappropriated water may do so by applying to the State Engineer and publishing notice of the application for four weeks. After the application has been granted the water must be put to a beneficial use within a reasonable time. Irrigation works must be kept in a safe condition or they may be condemned by the Engineer. Persons or corporations owning ditches conveying water in excess of their own needs must sell the excess to any person desiring to put the water to a beneficial use, a reasonable charge to be made for the water. In case of refusal to sell the excess, recourse may be had to the courts. The cubic foot per second is made the unit of measurement, and it is declared that the maximum allowance shall be one cubic foot per second for each seventy acres. Various other provisions are made, such as declaring forfeitures for non-users, requiring the construction of measuring boxes, maintenance of bridges, and forbidding waste. An appropriation of $40,000 is specified in the proposed law, of which sum $25,000 is for the office of the State Engineer and $15,000 for the Water Commissioners.

# IV. The Irrigation Bill Proposed By the California Water and Forest Society.

(Omitted sections refer to matters of detail.)

The people of the State of California represented in senate and assembly do enact as follows:

### Section 1. Declaring Ownership of Water in the State.

The waters of all streams in this State, whether flowing above or under ground in known or defined channels, are hereby declared to belong to the State of California, subject to all existing rights to the use thereof, whether by reason of riparian ownership or by appropriation.

### Sec. 2. Limiting Riparian Rights.

Riparian rights in the waters of the streams of this State are hereby confined and limited to the amount of water reasonably necessary and needed for the irrigation of riparian lands, and for watering stock and domestic uses on such land; and a riparian owner can not, by injunction or otherwise, prevent the beneficial use of the waters of a stream to which his lands are riparian when the same is not actually needed and used by him for watering stock and for domestic use or irrigation thereon.

### Sec. 3. Defining Riparian Right to Irrigate.

The riparian right to irrigate is limited to land bounded by the ordinary flow of and riparian to a stream, which is irrigable therefrom, and would be benefited by irrigation, and which is within the watershed of such stream, and may be used only to a reasonable extent and consistent with the equal use thereof by all others entitled to use the waters of such stream, and the surplus must be turned back into the stream on such owner's land.

### Sec. 4. Waters of Flowing Streams May Be Appropriated.

Subject to vested right therein, whether as riparian owners or by appropriation, the waters of any stream may be appropriated for any beneficial public or private use, in the manner provided in this act, and not otherwise.

### Sec. 5. Establishing State Board of Engineers.

For the purpose of carrying out the provisions of this act, a board of four engineers, consisting of one chief engineer for the State at large and one engineer for each one of three districts of the State as hereinafter defined, shall be appointed by the Governor by and with the consent of the Senate, who shall be paid out of the State Treasury a salary of ..... dollars per annum for the chief engineer, and ..... dollars each for the engineers, payable in monthly installments; said board to be known as the State Board of Engineers.

The first district shall consist of the counties of Marin, Sonoma, Solano, Sacramento, Amador, Eldorado, and all counties of the State of California north of said counties; the second district shall consist of the counties of San Luis Obispo, Santa Barbara, Ventura, Los Angeles, San Bernardino, and all counties lying south of said counties, and also the counties of Inyo and Mono; the third district shall consist of the remaining counties of the State.

### Sec. 6. Making Governor Ex-Officio Member of Board.

The Governor of the State is hereby made a member ex-officio of said Board of Engineers, and he shall, when present, preside at all meetings of the Board and cast the deciding vote in case of a tie.

### Sec. 7. Defining General Powers of the Board.

The said Board of Engineers may define the manner in which the measure of waters shall be arrived at, not inconsistent with the provisions of this act;

Define the duty of water according to the locality and soil;

Define the portion of the year during which water shall be supplied for irrigation;

Regulate the extent and points of diversion from rivers, streams or other waters;

Regulate from time to time the water rates which may be charged by licensees and others, as in this act provided, and the publication of tariffs or rates;

Regulate the manner in which water is to be supplied to persons entitled thereto; whether continuously, or at stated intervals, or under both systems; and to appoint deputy engineers at the request of any person, company or corporation supplying water for sale, rental or distribution, to regulate such supply and use and the manner thereof, the compensation of such deputy to be paid by such person, company or corporation; such deputy to be under the direction of such Board of Engineers and employed only so long as needed and requested, as aforesaid, and not to be an officer or agent of such person, company or corporation;

Authorize some member of said Board of Engineers or other officer appointed for that purpose, to determine, subject to review by said Board of Engineers, what constitutes surplus water as mentioned in this act;

Make such orders as are deemed necessary from time to time to carry out the provisions of this act, according to their true intent, or to meet any cases which arise and for which no provision is made in this act, and further, make any regulations which are considered necessary to give the provisions of this act full effect;

To perform all the duties and exercise the powers now imposed and conferred upon the Commissioner of Public Works and the Auditing Board to the Commissioner of Public Works;

To adopt and use an official seal.

### Sec. 8. Making Existing Companies Subject to This Act.

Any companies already formed to promote irrigation or to sell, rent or distribute water to the public, shall be subject to all of the provisions of this act relating to such companies, their rights and duties.

### Sec. 9. Requiring Existing Companies to Make Report.

All persons, corporations or associations having or claiming the right to divert and use any of the waters of any of the streams of this State at the time of the passage of this act, whether as riparian owners or appropriators, are hereby required to make report, under oath, in duplicate, to the said Board of Engineers, on forms provided by said Board, within ..... months after the taking effect of this act, showing:

a. The name and address of such owner or claimant;

b. The amount of water claimed by him;

c. From what stream;

d. The amount of water actually being diverted and used by him;

e. For what purpose used;

f. By what means diverted and distributed;

g. The cost of such works;

h. The point of diversion on the stream;

i. If for irrigation, the quantity and description of land irrigated, and a map of the irrigating canal or pipe line and the lands irrigated;

j. If as riparian owner, the quantity and description of the land claimed to be riparian to the stream, and the quantity and description thereof susceptible of and needing irrigation therefrom;

k. If for the purpose of sale, rental or distribution, the area of land susceptible of irrigation from the system, and the number of acres actually irrigated;

l. The date of the notice of the appropriation and of the actual appropriation of the water claimed.

### Sec. 11. Requiring Board of Engineers to Determine Flow of Streams.

It is made the duty of said Board to survey and measure the waters of the streams of the State, and without unnecessary delay ascertain and determine the amount of water flowing therein, and susceptible of diversion and use, including both the ordinary flow and flood waters thereof, measuring separately the ordinary flow; such measurements to be made in the order of their importance for irrigation purposes and whenever, in the judgment of the board, such measurements are needed and will be beneficial, provided, that measurements already made, if found reliable and correct by the Board, may be adopted.

### Sec. 12. And to Ascertain and Report Quantity and Description of Riparian Lands, with Maps.

It is also made the duty of said Board to ascertain, without unnecessary delay, the quantity and description of lands riparian to each of said streams, how much and what parts thereof are irrigable, and needing irrigation therefrom, and the quantity and what part of said lands are actually being irrigated from the stream, and make a map in duplicate for each stream, showing thereon the matters and things in this section mentioned, and the position of said stream to said lands with regard to its natural flow;, and such surveys of riparian lands shall be made upon such streams and to the extent necessary, in the judgment of the Board of Engineers, to carry out the provisions of this act.

### Sec. 13. And Existing Appropriations.

Said Board shall also ascertain and determine what notices of appropriation have been filed on each stream, and recorded, as provided by law, and by whom, what of such notices have been made good by actual diversion and use, and how much of the waters of each of such streams is being used, by whom, and upon what lands.

### Sec. 14. And to Make Report of Results.

Such Board shall make a report in duplicate for each of such streams, showing the amount of water flowing therein, at different seasons of the year, and susceptible of diversion and use, the amount thereof necessary for use on riparian lands bordering thereon, the amount in actual use, the amount appropriated, diverted therefrom and being used, and the amount of surplus water, if any, remaining and subject to appropriation, stating separately the ordinary flow and storm waters.

### Sec. 15. Requiring Reports and Maps to be Filed.

One copy each of the maps and reports above required to be made shall be filed in the office of the Secretary of State, and in the office of the Recorder of the county through which the stream flows, and they and each of them, or certified copies thereof, shall be competent and prima facie evidence of the facts stated therein or delineated thereon, provided that if any stream flows through or into more than one county, one map and report for each of said counties shall be made and filed therein.

### Sec. 16. How Water May Be Appropriated—Application.

All of the waters of any stream not already acquired or held by virtue of the ownership of lands riparian thereto or by diversion and appropriation therefrom may be appropriated for public or private use as follows, and not otherwise:

1. The person or company desiring to appropriate any such water shall file with the Board of Engineers an application on blanks provided by said Board of Engineers, showing:

a. The name, residence and occupation of the applicant.

b. The quantity of water desired.

c. The stream from which it is desired to take the same.

d. The point on the stream where the diversion is to be made.

e. The purpose for which the water is to be used, and if for the purpose of irrigation, a description of the land to be irrigated, and a map showing the line and course of the proposed ditch or canal.

f. The means by which the diversion and application of the water is to be made.

g. If the application is made for the appropriation of water for sale, rental or distribution to others, or by a number of persons for their mutual benefit and not by one person for his own private use, the application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of their proposed reservoirs, dams, canals, ditches, pipe lines, and all other works proposed to be used by them in the diversion of the water, and the area of lands proposed to be irrigated.

h. The application made for the purposes mentioned in the last preceding subdivision of this section shall also show:

a. The name and principal place of business of the person, corporation or other company or association making the application.

b. If by a corporation, the amount of its capital stock, how much thereof has been actually paid thereon, and the names and places of residence of its directors.

c. The financial resources of the corporation or person making the application, and the means by which the funds necessary to construct the proposed works are to be provided.

d. The location, character, capacity and estimated cost of the proposed works for the diversion and application to beneficial use of the water to be appropriated.

e. If for the generation of power or any other purpose than irrigation or domestic use, the purpose for which it is proposed to be used, the nature, location, character, capacity and estimated cost of the works, and whether the water used is to be and will be returned to the stream, and if so, at what point on the stream.

### Sec. 17. Approval or Disapproval of Application.

When said applications, plans and maps are presented for filing, the same shall be examined by said Board of Engineers, and if in proper form, shall be filed; if not in proper form, record shall be made of such applications and they shall be returned to the applicant, with indorsement thereon of the objections thereto, with leave to correct and return the same within thirty days, but not thereafter.

### Sec. 18. Action on Application Notice.

If not corrected as required, no further proceedings shall be had thereon. But when filed in compliance with this act, the said Board of Engineers shall at once, at the expense of the applicant, to be paid in advance, publish in some newspaper of general circulation published at the county seat of the county in which said appropriation is to be made, a notice of the application made, showing by whom made, the quantity of water sought to be appropriated, the stream from which the appropriation is to be made, and at what point on the stream, the use for which it is to be appropriated, and by what means, which notice shall be published as often as such paper is issued for thirty days, or if no paper is published in any county, then by posting such notice for thirty days in three of the most public places in the county.

### Sec. 19. Authorizing Protest.

Any person or corporation interested may at any time within thirty days after the completion of the publication of said notice, file with said Board a written protest against the granting of said application, stating the reasons therefor, which shall be duly considered by the Board, and the Board may, in its discretion, hear evidence in support of or against such application.

### Sec. 20. Permit for Construction of Diverting Works.

If said Board of Engineers shall determine that said application is in due form and should be granted in whole or in part, a permit signed by the chief engineer shall be issued authorizing the applicant to construct the works for the diversion of the water, or so much thereof as the Board shall determine to be reasonably necessary for the uses and purposes proposed, and no more; but the Board may, for good and sufficient reason, disapprove and reject the application, but no application shall be rejected where there are unappropriated or unused waters of the stream.

### Sec. 21. Limitations on Power to Issue Permits.

No permit issued by the Board shall authorize the construction of works for the diversion of any water the capacity of which shall be in excess of the surplus unappropriated water in any stream, nor shall any permit granted by said Board affect or in any way interfere with previously vested rights in the waters of said stream of whatsoever nature.

### Sec. 22. What Permit Shall Contain.

The permit issued by said Board shall state the amount of water authorized to be appropriated, for what purpose, the place of use, the means by which the diversion and application of the water is to be made, and the time within which the works for the diversion and application thereof shall be completed, not exceeding a reasonable time, to be fixed by the Board.

### Sec. 23. Requiring Board to Ascertain and Record Diversions of Water.

It shall be the duty of said Board, as soon as the same can be done, to investigate as to all existing diversions and uses from the streams of this State, making such investigations in the order of the importance of such streams as to the quantity of water diverted for purposes of irrigation and other beneficial uses, and to compile

and record in their office a table of such streams, the order of their priorities of appropriation and the extent of each and the extent of the priorities of each, in whole or in part, and such information shall be obtained and such compilation made by examination of existing records, judgments and decrees of court, and such reports and data as are satisfactory to said Board, including such additional investigations as they shall deem necessary for that purpose.

**Sec. 24. Inspection and Report of Works When Constructed.**

Upon the completion of the works for the diversion and application of water under any permit, the holder of said permit, or his assigns, shall report the fact to the Board of Engineers, and the chief engineer or the engineer for the district in which the appropriation is sought to be made, shall, without delay, make full inspection and examination of the works constructed, and make report upon their construction and condition, and whether or not they conform to the terms of the application and permit, and are adequate for the purpose intended.

**Sec. 25. License to Use Water, When May Issue.**

Upon such report being received, if the Board is satisfied that the law has been fully complied with and that water to be appropriated is needed for the purpose intended, a license signed by the chief engineer shall be issued to the applicant, or his assigns, entitling him to divert and use said water, or so much thereof as the Board may find to be necessary for the use proposed. Licenses granted upon applications made under this act for water not previously appropriated to be numbered consecutively as to each stream, in the order as to date when such applications are filed.

**Sec. 26. What License Shall Contain.**

Said license shall set forth the name of the licensee, and his place of residence, or if a corporation or other company or association, the State of its organization and its principal place of business, the quantity of water he is authorized to divert, from what stream, by what means, and the purpose for which he is authorized to use the same, and if for irriagtion, a description of the land to be irrigated.

**Sec. 27. Rights Vested by License, and Effect Of.**

Any license issued as above provided, for water appropriated under this act, shall vest in the licensee the right and title to the use of the amount of water mentioned therein, in the manner and for the purposes therein mentioned, and not otherwise, except as hereinafter provided where appropriated for sale, rental or distribution to others; provided, that such license shall not impair or affect any rights therein vested prior to notice given of the making of the application above provided for.

**Sec. 28. Limitation of Effect of License.**

No license for the diversion of water as above provided for in excess of the capacity of the works actually constructed and water actually diverted and applied to beneficial uses, shall be valid.

**Sec. 29. Licenses to Appropriators Prior to Passage of This Act.**

Said Board of Engineers shall, after ascertaining who have appropriated waters of any stream prior to the passage of this act, issue a license to each of such appropriators for the amount of water appropriated by them, containing the same matters required in case of an appropriation under this act.

**Sec. 30. Effect of Such Licenses.**

Such license shall be binding upon the State as to the right of such licensee to use the amount of water mentioned therein, and shall be prima facie evidence as to all other persons, but no license so issued shall have the effect to change the right of any prior appropriator or limit his right to a less quantity of water than he has actually appropriated and is then entitled to use, the purpose of this and the preceding sections heing to ascertain and make record of all existing rights in the waters of the streams of the State, and not to divest or interfere with such rights.

**Sec. 31. Licenses to Store and Use Flood Waters.**

The said Board of Engineers may, upon application made therefor as provided in this act, and upon like notice, grant to any person, corporation or association a

license to divert and store, for beneficial uses, the surplus waters of any stream during floods or high water, or during those portions of the year when water is not required for irrigation purposes; and, for the purposes of this section, all water which cannot be or is not used during the seasons of flood or high water is declared to be surplus water.

### Sec. 32. Water Appropriated Appurtenant to Land.

All water appropriated as provided for in this act for the purpose of irrigation shall become appurtenant to and will pass with conveyance of the land for which the right of use is granted, and may be used on other lands upon application therefor and permit issued by said Board; and if use thereof is abandoned, the right thereto shall be forfeited, the right to the use of the water shall at once revert to the State, and may, upon proper application as in this act provided, be granted to another.

### Sec. 33. Licenses Must Be Recorded.

All licenses issued under the provisions of this act shall be by the licensee recorded in the office of the county Recorder of the county in which the appropriation is authorized to be made, within thirty days after its issuance, and the same shall also, within the same time, be recorded in a book kept for that purpose in the office of said Board of Engineers, and such licenses, or certified copies thereof, shall be competent evidence of the right to the use of the water by the licensee or his assigns, and shall be sufficient prima facie evidence of such title.

### Sec. 34. Licenses May Be Assigned and How.

Such license may be assigned by indorsement thereon, and like indorsement on the margin of the records where the same is recorded, provided that such assignment shall not be effective until approved by the Board of Engineers, and such approval indorsed thereon, signed by the chief engineer, and no such approval shall be made until said Board is satisfied of the willingness and ability of the assignee to fulfill the obligations imposed by said license and the purposes for which the appropriation is made.

### Sec. 35. Water Appropriated for Sale Held in Trust.

Where license is granted to any person, corporation or association to appropriate water for sale, rental or distribution to others, said licensee shall hold said water in trust for such use and for the persons to whom it is to be supplied, and not otherwise; and when any part of the water so appropriated shall be applied to and used upon the land of any person or corporation, the right thereto shall thereby become appurtenant to said lands, and the water must continue to be supplied thereto, unless transferred to other lands by agreement of the parties, can only be used thereon, and the right will pass by the conveyance thereof, provided that such right shall be lost to the owner of said land and to said land, and revert to the licensee, in trust, for a failure to use the same thereon for the term of two years, or the voluntary abandonment thereof, or the failure or refusal for one year to pay the said licensee the rental or compensation fixed for the use thereof, in the manner provided by law.

### Sec. 36. Board May Cancel Licenses When.

Said Board of Engineers shall have power to cancel any license in whole or in part for a failure, without reasonable excuse, or want of capacity of the system constructed, resulting from the fault or negligence of the licensee, to use the water or any part thereof within a reasonable time, in which case the right to the use of the water so released from the effect of such license shall revert to the State, and be again subject to appropriation under this act.

### Sec. 37. Grant of Rights of Way Over State Lands.

Any person, corporation or association having procured the necessary permit to construct works for the diversion and use of water, as in this act provided, is hereby granted a right of way over all lands owned by the State of California over which said works, or any part thereof, may pass; provided, that if, for any reason, said works shall not be completed or put in operation, or shall be abandoned, then such rights of way shall immediately revert to and vest in the State.

### Sec. 38. Rights of Condemnation.

Any person, corporation or association having the right to divert water from any stream or canal and desiring to construct any ditch, canal, pipe line, flume line,

or other works for the diversion and use of such water, which must necessarily pass over the lands of another, shall have the right, where such diversion is for any use or purpose authorized by this act, to condemn such right of way over such lands as shall be necessary for the construction and operation of said works, or any part thereof, upon paying a reasonable and just compensation therefor, such condemnation to be had as now or hereafter provided by law for the condemnation of lands or rights of way thereover.

### Sec. 39. Rights Subject to be Taken Over by the State.

All water rights in or irrigation works on any of the streams of this State acquired or constructed under this act, or under previous laws, shall be subject to the right of the State to take over, acquire and use such water and works by paying to such owner or owners of such water right or rights or works reasonable and just compensation therefor, such compensation to be agreed upon between the State and such owners or claimants, and each of them, if the same can be agreed upon, and if not, the State shall have full right and power to proceed in such condemnation proceedings as provided by law to condemn and acquire title to such water rights and works for public use by the State, either for itself or for distribution to or use by the public or so much of the public as may be supplied with water from any such stream.

### Sec. 40. Subject to Laws of Congress for Storing Water.

All rights to water flowing over, on or across Government lands of the United States, and all flood waters acquired under this act or previous laws of the State, shall be subject to any acts of the Congress of the United States providing for the storage, conservation and distribution of the flood or other unappropriated waters of such streams for public use, and the Government of the United States may, in the interest of the public good, acquire right and title to all or any part of the waters of any of the streams of the State in furtherance of any such enactments of Congress, by paying to any owner of water rights reasonable and just compensation therefor, to be arrived at by agreement of the parties, if possible; if not, by condemnation proceedings, as provided by law.

### Sec. 41. Rights, How Abandoned.

All rights to the use of water acquired under this act or otherwise, shall be lost and abandoned by a failure, without sufficient excuse, for the term of two years, to apply to a beneficial use the water appropriated; and it is made the duty of said Board of Engineers to make record in their office of such abandonment.

### Sec. 44. Rules of Priority.

The doctrine first in time first in right shall apply to all appropriations of water from any stream in this State, whether made under this act or prior thereto, and all licenses issued under this act for water appropriated hereunder shall relate to and take effect as of the date of the filing of the application, and as to water appropriated prior to the passage of this act, licenses issued as in this act provided shall be prima facie evidence of priority of rights as to such prior appropriators. But as between persons or lands supplied by appropriators for sale, rental or distribution to others, under the same appropriation, the rights of takers of water from such appropriators shall stand upon an equality, and in case of a shortage of supply there shall be no preferred rights to the water, but all shall share pro rata in the water furnished; provided, that any sales or disposition of water or right to use the same in excess of the capacity of the system and the normal available supply of water shall be void.

### Sec. 45. Rates May Be Fixed by Water Companies.

All persons or corporations supplying water for irrigation or domestic use outside of cities and towns may fix and establish such rates or compensation for the water furnished by them as they may deem reasonable and just, and such rates shall prevail unless not less than ten per cent of the persons taking water under any such system shall be dissatisfied with such rates, and make application to said Board of Engineers to have other rates fixed.

### Sec. 46. Board of Engineers May Fix Rates When—Petition.

Ten per cent of the takers of water under any such system of supply may, by petition, apply to said Board of Engineers to fix and establish such rates. Upon such petition being filed, written notice shall be served upon the person, corporation

or association whose rates are sought to be established by the filing of said petition, a copy of which shall be served with the notice.

**Sec. 49. Basis of Fixing Rates.**

In fixing said rates, the Board shall ascertain and determine the actual necessary cost of the construction of the system used and necessary for supplying the water, the reasonable cost per annum of maintaining and operating the same, and keeping it in proper and reasonable repair, and the depreciation of the plant, and shall fix and allow such rates as will return to said person, corporation or association the actual cost of repairs, maintenance, operation and depreciation, and not less than the then legal rate of interest net on the actual necessary cost of its plant. Depreciation, as used in this section, shall be construed to mean the gradual decay of the plant from use and the action of the elements which will in time require replacement of the plant, in whole or in part, new for old.

(The remainder of the bill, including sections 50 to 85, is devoted mostly to detail. The sections given contain the essential features of the proposed law.)

# V. Report of the Commission in Presenting the Foregoing Bill.

To William Thomas, President California Water and Forest Association:

The undersigned, constituting a Commission appointed by you to frame a bill to be proposed to the Legislature of the State, for its consideration, codifying the irrigation laws of the State, respectfully submit the following report and accompanying bill.

This work was undertaken by your Commission with a full appreciation of the vast importance of the subject to the State at large, and the manifold and perplexing difficulties of framing a law that would meet the exigencies of the occasion and at the same time satisfy and protect the many conflicting interests growing out of claims to the flowing waters of the streams of the State. These interests are of great importance, not only to the parties immediately concerned, but to the whole State. It has been the fixed purpose of the Commission, from the beginning to the end of its labors, to propose such legislation as will make it possible to develop and apply to beneficial uses all of the flowing waters of the State, and, at the same time, to protect all previously acquired and existing rights, whether such rights are the result of the ownership of riparian lands or of appropriation either by the actual diversion and beneficial use of the water, only, or by complying with the present laws providing for such appropriation, but, in each and every case, to limit such right to the needed and beneficial use of the water.

The scope and main purpose of the proposed bill cover:

1. A declaration of ownership in the State of the flowing waters in its streams subject to vested rights.
2. The definition of riparian rights and the limitation of such right to beneficial and needed uses of water.
3. The means by which water may be appropriated.
4. The fixing of rates and compensation for water supplied to the public.
5. The abolishment of the offices of Commissioner of Public Works and the Auditing Board to the Commissioner of Public Works and the substitution therefor of a Board of Engineers, of which the Governor is made a member ex-officio.
6. Vesting in said Board of Engineers all of the powers of the offices abolished and all powers necessary to carry out the provisions and objects of this act.
7. Providing a system of administration and control of the distribution and use of water in order to insure its proper and fullest beneficial use and prevent its illegal use and waste.
8. Authorizing the State, at any time, to acquire, by agreement or condemnation, any and all water and water rights.
9. Protecting the Federal Government in the proposed storage and distribution of flood waters.

The great difficulties in the way of satisfactorily accomplishing these important objects must be acknowledged. But that the effort should be made and the best possible results attained should be conceded.

The duty of framing and enacting laws for the State rests with the Legislature, chosen by the people for that purpose. It is a duty that we do not desire to encroach upon. But it was felt by us, and by the body by which we were chosen, that it would not be out of place or unseemly, considering the difficulties and intricacies of

the subject, that some maturely considered bill should be prepared and submitted to that body to be considered and dealt with as it may deem proper and for the best interests of the State.

With this view the Commission has considered, weighed and discussed every item of the proposed bill and submits the result of its labors, hoping it may aid the Legislature, if it shall enter upon such legislation, in performing the important duty resting upon it. We do this with no little diffidence. We are not tenacious of our own views or the precise terms of the bill we propose. Together with all good citizens, we want the best law and the best results possible.

This being so, we trust this proposed law will be given the broadest publicity possible and that the fullest and freest criticism of it be invited.

We have thought it best that this report should contain a brief summary of the proposed law, the reason and necessity for the enactment of its various provisions, and a brief statement of our own views respecting it.

I.

As to the declaration of ownership in the State, it has heretofore been assumed, or taken for granted, that the flowing waters of the State are owned by the State, and legislation authorizing the appropriation of water and regulating its diversion and use has proceeded, evidently, upon that theory. In some of the States such ownership has been declared by the Constitution. It was thought best not to leave this to mere assumption in the future but to so declare in terms.

II.

In respect of riparian rights, so-called, we propose certain sections limiting the right of a riparian owner to the water needed and necessary for use on his land and preventing him from resorting to a writ of injunction to prevent some one else from putting the water to a beneficial use when he is not using it and does not need it.

Here we were confronted with the question whether the Legislature can, legally and without violating the Constitution of the State, or of the United States, thus limit the right of a riparian owner to the necessary beneficial use of water and prevent him from standing in the way of the beneficial use of it by others, merely that it may flow past his land unused.

That it is of supreme importance to the State that this should be done, if it can be done legally, the Commission was unanimously agreed. But upon the question whether the Legislature has the power to do it or not the Commission was divided.

One of the members did not agree with the majority as to the legality or expediency of one of the provisions of the proposed bill, in this: That while the principles announced are, as original propositions, consistent with the best interests of the State; that no definition of riparian rights should be attempted, and that the bill should neither undertake to define what are riparian lands or what are riparian uses, for the reason, as pointed out, that these matters are now settled and legislation thereon is precluded by reason of the Supreme Court of the State having passed upon the questions involved and the same being adjudications of rights of property, are not subject to legislative modification, and that such legislation, if in accord with the decisions, is not needed, and if contrary thereto, would be unconstitutional and void, and while these provisions might be held to be unconstitutional and eliminated from the act, without destroying the other portions thereof, that such provisions, if unconstitutional, would put in jeopardy the constitutionality of the entire act; and also doubted the expediency of certain other details of the act. But, with the above the act, your Committee is unanimous in reporting favorably the bill as proposed. But the majority of the Commission maintained that by the proposed legislation no substantial or beneficial right would be invaded; that, on the contrary, the full right to the beneficial use of the water is preserved to the riparian owner; that no constitutional right to prevent the beneficial use of the water by others, merely that it might flow past or over his land, exists; that no new vested rights have intervened, or arisen, by virtue of, or as a result of the decisions of the Supreme Court, consequently no vested rights, within the meaning of the Constitution, do exist; that the rule of right supposed to appertain to riparian ownership in this State results only from decisions of the Supreme Court, which remain subject to overruling by that court, or changed by legislative enactment, save only, that no rights that have since vested under or by virtue of such decisions can be taken away. And further, that by the common law, no right to take water from a stream, for irrigation of riparian lands, existed, and such right was engrafted on the law of this State only by judicial decisions, and that, therefore, as to the use of water for irrigation, the right of a riparian owner, being neither a constitutional, common law,

or statutory right, or in any constitutional sense a vested interest, it may be defined or limited by statute. It is further believed by the majority of the Commission that the question is one of such supreme moment that the Legislature should so enact, leaving it to the courts to determine whether such legislation is constitutional or not, and if it should be necessary to achieve this most desirable legislation, that the Constitution of the State be amended, and such amendment will remove the obstruction to such legislation, then the proper amendment be proposed for adoption. Entertaining these views, the majority of the Commission have submitted the proposed legislation on this subject as it appears in the earlier sections of the bill.

If it be the unalterable law of this State that an owner of riparian land may, as at common law, prevent any one above him from taking any water out of the stream for beneficial use, merely that the stream shall flow past his place undiminished in quantity, and whether such riparian owner can put the water to a beneficial use on his land or not, then no legislation that we may suggest, or the Legislature enact, will materially relieve the situation. If that be the law, and it cannot be changed or modified, there is probably no water in any stream in the State that can be legally appropriated, and the right to the use of water that has been appropriated heretofore has only been acquired by the sufferance of riparian owners or their neglect to assert their rights. The enforcement of such a law would be disastrous in the extreme. The majority of the Commission do not believe, if this is the law of the State, as declared by the Supreme Court, that it cannot be changed by the Legislature.

III.

In order that appropriations may be properly and legally made, the quantity of water now in use, and the quantity left to be appropriated in each of the streams of the State, are required by the bill to be ascertained and record made thereof, and provisions for such work being done by the Board of Engineers and for applications to such Board for the appropriation of all water remaining in the streams are inserted in the bill; such applications being subject to approval by the Board, and the amount diverted to be limited to the amount needed; the right to be granted by a license to be issued by the Board. These provisions are thought to be necessary to prevent the indiscriminate and over-appropriation and use of water, and the making and keeping of a proper public record of all existing water rights.

IV.

Provision is also made for the fixing, by this same Board, of rates and compensation for water supplied to the public, other than in any city, city and county, or town, where such rates or compensation are not fixed by the contract or agreement of the parties. The effort has been made to establish a just and equitable basis for the fixing of such rates and a just compensation provided for. Stringent provisions are also inserted compelling all such companies to keep and maintain their plants for the supply of water in good repair, thus insuring the best possible service.

This power is proposed to be conferred upon this special Board, because the fixing of such rates in the past, by local and often interested bodies, has been entirely unsatisfactory and fruitful of expensive litigation; and for the further reason that it is believed that the duty imposed calls for the exercise of such special knowledge and skill as the members of this Board are required to possess, and for the further reason that it is thought to be wise to invest in one competent body the full and complete administrative and supervisory power over the distribution and use of water.

We have left the amount to be paid the engineers to be determined by the Legislature. We desire to say, however, that the bill is intended to call for and require a high degree of ability on the part of such engineers and we respectfully suggest that the salaries should be made high enough to command the ability demanded.

V.

The abolishment of the offices of Commissioner of Public Works and the Auditing Board to the Commissioner of Public Works, and the transfer of their duties to the Board of Engineers, provided for by this proposed bill, was resolved upon because it was believed that for the State to maintain both was an unnecessary expense, and that the duties imposed upon the two were so closely allied to each other, one relating to the drainage of land and the other to its irrigation, they should be exercised by the same body.

It was suggested that instead of creating a new Board under this bill the powers and duties provided for in it should be conferred and imposed upon the Commis-

sioner of Public Works. But, after careful consideration, the Commission came to the unanimous conclusion that this would be unwise, as the existing office did not seem to be fitted to the performance of the duties provided for here, and the same end, so far as the saving of expense is concerned, would be reached by the course taken by the Commission.

We are fully aware of the existing feeling against the promiscuous creation of new Commissions and the resulting increase of the governmental expenses of the State, and with that feeling we are in full sympathy. But in this case the duties to be performed are peculiar and call for professional skill to carry them out properly, and no court or body now provided by law is at all adequate or competent to carry out the provisions or purposes of the bill. Therefore, no choice was left the Commission but to provide a body of men possessing the knowledge necessary to attain the objects in view.

VI.

There is an imperative necessity, in some parts of the State, and that necessity will, before long, arise in other parts, that the wasting and misuse of water be prevented. The conditions are such that every drop of water possible must be saved and secured to users who will apply it to beneficial purposes. Much of the water that should be beneficially used is now going to waste, partly through carelessness and neglect, often by its wilful and wrongful misuse. It is absolutely necessary, therefore, that somebody be vested with supervisory power to regulate and control the use of water and see that it is properly applied and not wasted. Great care has been taken in the preparation of this bill to secure this object by vesting the Board of Engineers with full power to deal with the subject, and by providing severe penalties for violations of the act.

VII.

There is a strong feeling prevalent in some quarters that the State should own all water and water rights and itself become the purveyor of water. This does not seem to us to be practicable, or even possible, at the present time, but, in order that the State may, at its pleasure, take over any or all of the water, water rights and water works in the State, provision is made for its so doing.

VIII.

As an act has already been passed by the Congress of the United States providing for the construction of reservoirs for the storage and distribution of flood waters, the Commission felt that all efforts of the Federal Government to preserve and supply water that is now going to waste should be encouraged in every proper way, and for that reason provision is made in the bill that rights acquired in water shall in all proper cases be subject to the laws of Congress for the storage of flood waters. This cannot be so, of course, as against vested rights in water except by condemnation, as in other cases, but, as far as it may be legally done, and without detriment to vested interests, it is believed to be right and proper and for the best interests of the State to leave the way open to the Federal Government to prosecute the enterprises now contemplated for the storage and application to beneficial uses of all water that can be saved and utilized in that way.

IX.

But we are disposed to think that the development and distribution of unappropriated and undeveloped water, by private enterprise and expenditure of private money, should, under proper safeguards, be encouraged, and any rights acquired by private individuals or corporations, in the attempt to increase and extend the use of water, should be fostered and protected, subject always to the right of the State to intervene and acquire such water and water rights whenever the people of the State resolve that this should be done. We do not believe in the doctrine, declared by some, that no private individual or corporation should be permitted to appropriate any water, but that all water not already appropriated shall be held, appropriated and supplied by the State. Such a course, at this time, would, we firmly believe, put an end to the development or storage of additional water for many years to come, and thus check the advancement and growth of the State, and result in great detriment. We believe it should be the policy of the State, at this time, to encourage every lawful and legitimate enterprise and effort to increase the water supply of the State and extend its use to the vast areas of unirrigated lands as rapidly as possible but always under the careful supervision and control of the State, which should have the object of facilitating and hastening the consummation of this purpose. If, when this is done, or at any time before it is done, it shall seem to be ad-

visable for the State to take the place of such private individuals and corporations as have embarked upon such enterprises, by taking over their water rights and works, well and good. But the development and further distribution of water should not be made to await such action by the State. Such a course, it seems to us, would be ruinous.

The general scope and purpose of the bill we now propose is to confine the diversion and use of water to beneficial and needful uses, to put a check upon the extravagant, unnecessary, wasteful and unlawful use of water, to encourage and facilitate the development of additional water and its extended use, to guard carefully the rights of the State and of individuals, whatever their rights may be; to ascertain and make record of those rights, and to create a Board that shall have the power, and whose duty it shall be to so administer and control the appropriation, distribution and use of water as to accomplish these objects. It will take much time and money, but it will be worth it. This kind of legislation should have been entered upon at the beginning of the appropriation of water in the State. It would have been a much easier task then than it is now. But the importance of it was not appreciated then as it is now. It should not be longer delayed. If we shall, by our labors to that end, be instrumental in aiding the Legislature to formulate and enact adequate legislation on this most important subject, whether this bill or some other, we shall feel amply repaid for the labor done. The result of our work, as embodied in this proposed bill, is submitted for consideration.

Respectfully,

JOHN D. WORKS,
FRANK H. SHORT,
BENJ. IDE WHEELER,
DAVID STARR JORDAN,
FRANK SOULE,
CHAS. D. MARX,
ELWOOD MEAD,
F. H. NEWELL.

The bill as framed by the Commission contains some provisions the validity of which has been questioned upon constitutional grounds. Because of the existence of such questions I deem it improper for a judicial officer to participate in any recommendation of the measure, and for that reason I have abstained from any action upon it.

W. H. BEATTY.

# VI. CRITICISMS.

## Commission Bill and Amendments Adopted.

The text of the bill as reported by the Commission was published by the Water and Forest Society and widely distributed for criticisms. All objections or criticisms which were made were carefully considered by the Commission at a final meeting and some sections were changed. The following are the most important sections in which changes were made by the Commission in their final form, as introduced in the Legislature:

### Sec. 1. Declaring Cwnership of Water in the State.

The waters of all streams in this State, whether flowing above or under ground in known or defined channels, are hereby declared to belong to the State of California, subject to all existing rights to the use thereof, whether by reason of riparian ownership or by appropriation, but water percolating through the soil shall belong to the person owning the soil through which it percolates.

### Sec. 2. Limiting Riparian Rights.

Riparian rights in the waters of the streams of this State are hereby confined and limited to the amount of water reasonably necessary and needed for the irrigation of riparian lands, and for watering stock, domestic uses on such land and other actual beneficial uses; and a riparian owner cannot by injunction or otherwise, prevent the beneficial use of the waters of a stream to which his lands are riparian when the same is not actually needed and used by him for watering stock, for domestic use or irrigation thereon or other actual beneficial uses.

### Sec. 3. Defining Riparian Right to Irrigate.

The riparian right to irrigate is limited to land riparian to a stream, which is irrigable therefrom, and would be benefited by irrigation, and which is within the watershed of such stream, and may be used only to a reasonable extent and consistent with the equal use thereof by all others entitled to use the waters of such stream, and the surplus must be turned back into the stream on such owner's land.

### Sec. 35. Water Appropriated for Sale Held in Trust.

Where license is granted to any person, corporation or association to appropriate water for sale, rental or distribution to others, said licensee shall hold said water in trust for such use and for the persons to whom it is to be supplied and not otherwise; and when any part of the water so appropriated shall be applied to and used upon the land of any person or corporation, the right thereto shall thereby become appurtenant to said lands, and the water must continue to be supplied thereto, unless transferred to other lands by agreement of the parties, can only be used thereon, and the right will pass by the conveyance thereof, provided that such right shall be lost to the owner of said land and to said land, and revert to the licensee, in trust, for a failure to use the same thereon for the term of two years, unless by reason of exceptional conditions use thereof for such time was unnecessary, or the voluntary abandonment thereof, or the failure or refusal for one year to pay the said license or rental or compensation fixed for the use thereof, in the manner provided by law.

## VII. Objections from Southern California.

So far as is known, all the criticisms of the bill which were submitted to the Commission came from engineers and others in Central California. They were all couched in temperate, well-considered language, and none of them attacked the fundamental principles of the bill. It is not known that any one from Southern California sought to have the bill modified in any way. The final session of the Commission was held on December 19th, 1902. On December 29th, just ten days later, a meeting, previously called, was held in Riverside which was reported as follows in the Riverside Press of that date:

### Vigorous Protest Against Water Law.

The meeting for the discussion of the proposed State irrigation law at the Y. M. C. A. Hall this afternoon was well attended. There was a good representation of irrigators from Riverside, Orange, San Bernardino, and San Diego counties.

Senator A. A. Caldwell was elected chairman and William A Correll secretary.

On motion, the chairman appointed as a committee on resolutions: John G. North of Riverside, S. Armour of Orange, Scipio Craig and H. W. Allen of Redlands, and W. E. Smythe of San Diego.

Several articles and communications were then read. The first was that of Mr. Armour, which was read by W. M. Peck.

### MR. ARMOUR'S PAPER.

Mr. Armour of Orange presented an interesting paper on the proposed bill from which we quote as follows:

It is a trite saying that a stern chase is a long chase; so a comprehensive criticism of any measure, which seeks to overturn the established order of civilization in a particular field, must necessarily consume considerable time and space. This is especially true of a measure, like the proposed irrigation bill, that has so many ramifications and nothing good in any of them—"eighty-five sections and a bug in every one." While the following bill of indictment, or indictment of the bill, by no means exhausts the subject, it is hoped that it may be some addition to the general opposition that is rapidly developing against the measure.

1. The bill is faulty in classification, in clearness and in conciseness.

Although the arrangement is fragmentary and each section is given a caption, the topics are so intermingled that no subject, or what is said about it, can easily be found.

There is more or less confusion and uncertainty in the treatment of the various kinds of water rights and the language in some of the sections on other subjects is hard to understand.

2. The bill is lacking in consideration for the irrigators; it is autocratic, dictatorial and nagging.

With such a spirit pervading the law itself, it is easy to predict that officers and employes clothed with its authority would soon become so insolent and exacting that the irrigators would be reduced to virtual peonage.

There would be no redress in the courts, for the officers would simply be enforcing the law; the people themselves could not compel courtesy and consideration, since they are given no voice in the selection or retention of these officers; and the opportunities and excuses for depriving the irrigators of the water are so many and so varied in the bill that the poor devils would not even dare to make a protest.

3. The bill overrides all existing water rights, subverts every well-established principle of water jurisprudence and substitutes its own crude and untried provisions as the law of the land.

It is true that in sections 1, 4, 16, 20, 27, 29, 30, and perhaps others, the bill incidentally recognizes existing rights; but in section 8 it expressly states that existing companies "shall be subject to all the provisions of this act relating to such companies, their rights and duties." They are required by sections 9 and 42 to disclose everything pertaining to themselves and their business, and the whole bill assumes that it has jurisdiction over such companies. That means that all of their vested rights and those of their stockholders are subject to the supervision and control, the penalties and forfeitures, of this bill.

While pretending to respect vested rights, the bill insidiously seeks to destroy such rights. Sections 35 and 41 provide that a failure to use such water on a piece of land for two years forfeits the water right for such land. There are some lands bordering on the damp lands which would be positively injured without irrigation during a series of wet years and which would burn up without irrigation in dry years. Why should the irrigators be put into strait jackets and given no discretion in the management of their own property? Again, section 35 goes a step farther and makes a failure to pay water rates for one year sufficient cause for a forfeiture of the water rights. Does that look like respecting vested rights which are naturally, and should be legally, as certain as the recurring seasons and as enduring as time itself?

4. The bill in section 1 claims all unappropriated waters of the streams on behalf of the State, which is absurd. It also claims in section 39 that the State can take over acquired water rights and works by paying for the same, which is more than doubtful.

The State has no more right to take over the water than it has to take over the land upon which such water is run. While the principle of eminent domain permits the State to take private property for public use, this "public use" is for the government itself, or for practically the whole people, and not that the government shall become a purveyor of the article so taken.

5. The bill seeks to bar any appeal on the part of the irrigators to the courts for the protection of their rights; but it gives the Board of Engineers almost unlimited judicial functions and then makes the courts subject to the call of said Board.

Section 2 declares that a riparian owner cannot, "by injunction or otherwise," prevent the beneficial use of the waters of a stream, when he himself does not actually need such water. This declaration, with the understanding that the riparian owner and the would-be irrigator have equal rights in the water, is silly and superfluous; no court would issue such an injunction. The same declaration, however, with the understanding that the would-be irrigator has no right to the water, would be to encourage water-grabbing and then to deny to the owner of the water the privilege of legal redress. Why not extend the same immunity from prosecution to the theft or forcible seizure of other property? A state that would enact such a provision into law would become the instigator of the crime of robbery.

There are frequent allusions throughout the bill to "necessary" and "beneficial" uses of water; but nowhere is it stated in direct terms who is to be the judge of when or under what circumstances the use of water is necessary and beneficial.

6. As partially indicated under some of the preceding heads of this article, the bill provides the machinery and the necessity for a system of State espionage over the irrigators, no matter what the original basis of their rights might be.

The Board of Engineers, having been given the power by the act to judicially determine every question pertaining to the use of water and being required to enforce the provisions of the act, must of necessity find out whether its mandates are being obeyed or not. The bill itself will not appeal to the better nature of the irrigators, to the spirit of manliness, fair treatment of others and cheerful obedience to lawful authority; neither is it likely that the actions of the Board will inspire such feelings in the people. Hence it is safe to say no information of infractions of

the law will be volunteered—unless it be by a few of the lick-spittle, toadying class of individuals found in every community. For these reasons the Board will be compelled to inaugurate a system of espionage under its own management and control.

Just how this spying upon the irrigators will be accomplished cannot be foretold. As a preliminary step, the bill requires existing companies, in section 9, and new companies, in section 16, to disclose all the particulars the framers of the bill could think of. In addition to such pedigree, section 42 requires an even more searching report to be made every year. Section 7 allows deputies to be appointed at the expense of the irrigators and section 69 authorizes their appointment at the expense of the State. These reports and these deputy newsgatherers will furnish quite a fund of quasi-public information, as well as some that ought not to be made public. With this nucleus it would be an easy matter to encourage a few sycophants in each community to act as informers by granting some special privileges. At any rate the espionage would be accomplished somehow, until every hidden thing would be brought to light in its worst aspect, as well as many other things that never had any foundation in fact. Thus would be accomplished one of the purposes of this bill, viz.: that the private use of water should become a public use—so public that every one would know how much water it took to make his neighbor's coffee for breakfast, just what proportion of the dairyman's milk came out of a hydrant and the exact quantity of water it takes to make a wash-poplin dress for an average-sized woman.

7. The bill opens wide the door to promoters and water-grabbers, men who, under the pretext of investing capital for the development of the country, are engaged in seizing upon valuable water-rights and then compelling the owners either to buy them off, or to fight them in the courts, or lose their rights altogether.

The Board of Engineers is made the sole judge of vested rights, surplus water, etc., in sections 13 and 7 respectively. The fewer vested rights said Board upholds, the greater quantity of surplus water there will be to dispose of. After forcing the present users of water to disclose the technical foundation of their rights; after cutting down the quantity of water, by changing its duty, to those whose rights are upheld; after limiting the irrigating season to certain months of the year; after gauging the ordinary flow and the flood waters of the streams; after computing and mapping the irrigable land; after doing all these and other things to squeeze the water out of the present users, the Board, through section 63, which opens all the records and papers of the office to the public, virtually cries aloud to the promoters and land-grabbers: "Come in, gentlemen, and see what a nice lot of water we have uncovered. Title perfect; guaranteed by the State. No riparian rights to restrict its use; no limit upon the size of the order. First come, first served; 'first in time, first in right.' Step right in, gentlemen. Such opportunities seldom occur more than once in a lifetime. 'There is a tide in the affairs of men, which, taken at the flood, leads on to fortune.' Right this way, gentlemen; here's your chance, and when you have made your selection, don't forget those who put you next to a good thing."

8. The bill introduces politics into water affairs; it substitutes a bureaucracy at the State capital in the place of the local management and undertakes to give such bureaucracy illegal and unlimited power.

Section 5 makes it incumbent upon the Governor, with the consent of the Senate, to appoint the members of the Board of Engineers; naturally he would make the selections from his own party ranks. Section 6 constitutes the Governor the official head of the Board; and without doubt he would dominate its appointments, if the members were not already predisposed in favor of his political preference. This Board is given almost unlimited power to appoint deputies in every county of the State by section 69 of the bill. As a rule, water is not very potent in politics; but it certainly would be, if this system is inaugurated, and that, too, without its usual cleansing effect. On the contrary, if the irrigating water of the State must be filtered through the filthy pool of politics, then, in the language of our friend, William E. Smythe, "God help the unfortunate farmers, who depend for their small ditches upon the waters of a stream placed in the hands of 'deputy engineers,' employed by great private corporations but acting under the power of the State in 'regulating such supply and the use and the manner thereof.' "

9. The bill would enormously increase the expenses of the water users as well as the burden of taxation to the whole people of the State.

Section 5 leaves blanks for the Legislature to fill in with the salaries of the Chief and Assistant Engineers; but the Commission, in its report recommends that such salaries be made liberal. Section 7 allows deputies to be appointed at the expense of the irrigators, and section 69 authorizes their appointment at the

expense of the State. Section 64 gives a list of fees that must be paid by appropriators and others; but this list, formidable as it may seem, is a mere bagatelle compared wtih the expense of the Board of Engineers and the horde of deputies, who will go up and down the State like task-masters and inquisitors, spying into this and asking about that, ordering one thing to be done and forbidding another. Just what that expense will be some of the engineers, who have not yet been appointed deputies, can tell better than I; but with my limited observation along that line I can readily believe that it will be simply colossal. All this expense, too, is additional to the cost of supervision, construction and maintenance of works and to the expense of running the water. "Jones, he pays the freight"; every dollar of this unnecessary expense will fall upon the irrigators and tax-payers of the State.

10. The bill repeals laws that have grown up with the State, that have become well established by the decision of the courts and that are clearly understood by most of the irrigators.

Section 85 of the bill repcals twelve sections of the Civil Code of this State, some other acts "and all other laws and parts of laws in conflict with it." As a matter of course, all of the precedents of the decisions under these laws would be swept aside as inapplicable to the new order of things. These decisions have cost on an average probably $10,000 a side and represent the gleanings from the laws and decisions of every State in the Union. At such enormous expense ccrtain conclusions have been reached and certain principles established that are eminently just and fair, and are well understood by the people. Some writers blame the laws as the cause of the litigation; but no law is considerad absolutely valid until it has been tested in the courts. The good book tells us to "prove all things and hold fast that which is good." The proving has been done with the present laws; why should the knowledge and experience be thrown away? The same process will have to be gone over with any new law; the more unreasonable its provision the more litigation it will invoke.

The people of the State cannot afford to throw away all the knowledge and experience acquired in the last half a century at such a fearful cost, and then experiment with a deadfall like the proposed irrigation bill. It should be defeated at all hazards.

The following letter from F. C. Finkle, engineer of the Edison Company, was read:

## LETTER FROM F. C. FINKLE.

Before entering into detail permit me to express my opinion that the proposed measure is one of the most vicious bills relating to the question of irrigation, which I have ever seen attempted in this State. It seeks to establish paternal supervision over the vested property rights of our citizens in a manner never dreamed of by those whose capital, thrift and industry have built up the vast irrigated empire of California. Nay, it does more than this; it vests unlimited power in a Board of Engineers to say how we shall use our property and to deprive us of it entirely by granting it to others. And in this connection, I use the word property in the sense that it means all our citizens possess, for without water the land and improvements of agriculture possess no value. Look at section 7 of the proposed law. Does it not give the Board of Engineers power to tell you how much water you shall apply to your soil? Does it not authorize them to limit the months in the year when you shall irrigate? By doing these things, do they not dictate to you what crops you shall cultivate on your soil? Can agriculture in Southern and Central California survive such tyranny as this? Just think of it, a Board of Engineers appointed by political influence dictating to you how you shall use your land and water.

Again, section 7 gives this board authority to "regulate the manner in which water shall be supplied to persons entitled thereto; whether continuously, or at stated intervals, or under both systems." How would you like to be told that instead of accumulating your water into a fifty or hundred inch head, you must run continuously a stream of five inches to irrigate your orchard? And yet this is the power to be possessed by this Board of Engineers. Or how would you like to be told by this body of unrestricted authority that you shall accumulate your flow for a month instead of a week or two weeks. Or that you shall use a five-inch head one time and a hundred-inch head another? And yet this is just what they can do, for they can say "whether continuously, or at stated intervals, or under both systems."

But even admitting the honesty and ability of the Board, how long would it take them to become familiar with the varying conditions of this State, so as to make good and wise rules applicable to all conditions found within its borders? This I fear no one can answer. I would not undertake it in a natural lifetime. Is it not better to leave the decision of such questions to superior judges elected directly by the people of each county. Such judges are at least directly responsible to the people whose rights they are called upon to adjudicate and have the advantage of sitting and hearing all the evidence which can be produced on both sides of a question. This is not possible to do when one Board shall deal with the whole State. Further, in many cases, no recourse to courts is necessary to settle questions relating to irrigation, as water companies at the present time employ experts to determine the best methods of dealing with the various lands under their water systems so as to yield the best results to their stockholders or patrons.

Throughout the proposed measure the Board of Engineers is clothed with power to regulate all other matters such as rates, manner of constructing works, diversion points, measuring and deciding the flow of streams, etc. The same and greater objections will apply to the exercise of these powers as to those I have elaborated on above. Having no guarantee that the Board will be competent and honest men, and knowing that they will not have the time required to give the matters proper attention, even if they were so, how can you expect to be profited by their dominition and dictation? The whole scheme must inevitably result in wrong and disaster to the whole community.

But there is another feature of the bill which I will mention. I refer to the enormous expense of maintaining the Board of Engineers as proposed. Taking into account the salaries and expenses of the board itself and the expenditures for deputies as authorized under sections 7 and 69, I figure that the expense to this State would not be less than one-half million dollars annually over and above fees received. The field is so large and the propensity of those living at public expense to go to the limit is so great, that I doubt if we could expect less than this. And And for what would the tax-payers of this State be paying this money? For the creation of an army of political appointees in whose judgment the different counties could have no faith. For the establishment of a body with unlimited power in the regulation of affairs with which they would be less familiar than are the people themselves. And for constituting a Board to increase litigation and cast a cloud of uncertainty and doubt about every water right in this state.

## E. W. FREEMAN IS HEARD.

E. W. Freeman of Los Angeles then spoke on sections 11 and 15 of the bill. He said he did not think the time had come for the irrigators to deed their property to a Board of State Engineers.

## LETTER FROM JUDGE OTIS.

A letter from Judge Otis of Redlands to Senator Caldwell was read. We quote as follows from it:

I found a copy of the proposed irrigation bill waiting me at the "club" in Los Angeles, and I have taken the occasion to read it all carefully, and desire to state to you briefly (for what it may be worth) my impressions of the law, in accordance with your suggestion. I should like, were it possible, to be at your meeting on Monday where the matter will be taken up for discussion, but I find it will be impracticable for me to be there.

In the first place, it seems to me that the bill is entirely futile; it does not provide practical means to arrive at the objects it has in view. As to the effect of the bill, were it so constructed as to be practicable in its operation, I will speak later.

The organization of the Board of Engineers provided for in the act, seems in the first place to me (were the powers conferred upon them constitutional and effective) to be a most dangerous concentration of power, and to be as objectionable as the late proposed constitutional amendment providing for Commissioners to be appointed by the Governor, in whom should vest all the present powers of municipalities as to franchises, which was so overwhelmingly defeated at the last election. The powers, however, proposed to be given to this State Board of Engineers are in many respects judicial in character; they have power to hear and determine as to innumerable matters relating to already vested rights of property in water, not only as between the State and appropriators and riparian proprietors, but as between appropriators themselves and between riparian proprietors themselves, and as between riparian proprietors and appropriators.

Sections 29, 30, 31, 32, 36, 41, 55, etc., 72, 73, all to a greater or less extent confer powers on the Board which are at least quasi judicial. In any event, it must be conceded that these powers are either judicial, or they are not. If they are judicial, they are unconstitutional and invalid, and if they are not judicial, they are an incumbrance and ineffective, in as much as that they cannot be enforced, except by a proceeding in court fixing the relative rights as between co-owners of water.

The result of establishing any such Board, as that contemplated by the act, will be both dangerous and inconvenient, and a menace to the water rights of every water user in the State. Under the act, there seems to be no difference recognized between water companies organized to distribute water for hire or sale and those which are purely co-operative in character. The repealing clause of the act is liable to result in complications, which it is hardly possible at this time to forecast, and it seems to me that every effort should be made by this community and by all others where water is relied on for irrigation, to see that this bill is buried beyond all danger of resurrection at any subsequent Legislature.

There are a number of other objections to the bill proposed which I have not time nor space to go into, but it seems to me that, taken as a whole, the bill is as vicious and dangerous, and at the same time as superficially plausible, as any act we have had presented to the Legislature since the "Wright Irrigation District Act" was introduced, and we all know that the results of that act, in most instances have been absolutely disastrous, and have placed a blight on very many large communities. Believe me, very truly yours, GEORGE E. OTIS.

## MR. NORTH'S ADDRESS.

Following is a summary of John G. North's address:

That portion of the irrigation bill proposed by the Water and Forest Association which I have been requested to state my objections to, is embodied in sections 7 and 8 of the proposed bill. I realize the amount of labor before this meeting, and will therefore state my objections as briefly and occupy as little time as possible.

Section 7 of the bill defines the general powers of the Board of Engineers which it is proposed to establish by section 5 of the bill. It seems to me that section 7 seeks to confer upon this Board legislative and judicial powers, and if sustained by the State courts will give to the Board of Engineers broader powers than those courts themselves possess. If this is true, it needs no argument to show the dangerous character of the bill.

First. The said Board of Engineers may define the manner in which the measure of waters shall be arrived at, not inconsistent with the provisions of this act.

This authorizes the Board of Engineers to prescribe rules by which facts shall be determined, and even if it should not be held to confer legislative powers upon the said Board, and therefore to be unconstitutional and void, it is a dangerous proceeding and may cause trouble.

If the Board of Engineers should decide that the water to be apportioned or partitioned by them among different users, whether in the order of their priority or right of use, or all upon the same level, and with equal rights, should be determined by measurement of the streams in the month of March, and the amount of water then flowing should be the basis for all decisions as to respective rights and use, the result could not fail to cause trouble and confusion. If the Board should fix upon the month of June for a measurement for the determination of rights, it would scarcely make less trouble or confusion. Those who are acquainted with the flow of the numerous small streams, whose waters give value to the property of Southern California, know that these streams fluctuate in amount; that in some years the lowest stage of water will be in the month of August; in others the lowest stage will occur in September, or possibly in July. They know that in many cases, perhaps in most cases, the rights to the use of the waters of these streams have been adjudicated and are settled and determined. The determination of these rights have been, usually, after expensive litigation in which all parties were permitted to show facts upon which their rights rested, and the law applying those facts has been construed. Whether these rights have rested upon riparian proprietorship or upon statutory appropriation and diversion for a beneficial use, or upon a prescriptive right established by adverse user, all the facts have been determined, the rights have been settled, the law has been declared.

To give a Board of Engineers power to "define the manner which the measure of waters shall be arrived at" will place an instrument in the hands of the Board by which it may possibly unsettle and injure many of the rights already established.

Second. Define the duty of water according to the locality and soil.

"The duty of water," as I understand it, refers to the quantity to be supplied to a given quantity of land, and if the Board of Engineers is to define the duty of water, that means that they shall say to water users that they may have one inch of water to one acre of land, or one inch of water to five acres of land, or one inch to twenty acres, if in the judgment of the Board, the amount named is the "duty of water."

If this provision is to become law, those who depend upon water for irrigation will find themselves very much at the mercy of a Board of Engineers who will determine judiciously "the duty of water," presumably upon such evidence or testimony as the Board may receive, no member of which Board will be likely to be learned in the law, or familiar with the rules of evidence. The result may be that the adjudication and determination of facts by the Board of Engineers will be based upon evidence wholly inadmissible and which would not be considered by a court of law.

Third. Define the portion of the year during which water shall be supplied for irrigation.

If these words are to be accepted in their ordinary signification, they meant that the Board of Engineers may destroy the value of an orange grove, vineyard or an alfalfa field by depriving them of water during the season when they actually need it, and pouring the water of the streams down their natural channels for the benefit of no one except these riparian proprietors who desire that it may pass them unimpaired in quality and undiminished in quantity, and may flow unvexed to the sea.

To say that the Board of Engineers will not make unwise and unjust rules, regulations and decisions as to facts is no answer to this, for the reason that the proposed statute will give it power to do so.

Fourth. Regulate the extent and points of diversion from rivers, streams or other waters.

I suppose the "extent" of the diversion means the quantity of water diverted, and if so, the proposed Board is to have the power to dictate the quantity of water taken out by every person in the State, even though he may have spent large amounts of time and money in establishing those rights, which have been fully adjudicated and settled.

Fifth. Regulate from time to time the water rates which may be charged by licenses and others, as in this act provided, and the publication of tariffs or rates.

I have been inclined to the opinion that this would not be an unwise provision, but upon considering the matter more fully, I am satisfied that it would be unwise. The fixing of rates to be charged for the use of water by those who supply and distribute it now rests with the city councils of municipal corporations, and with the respective boards of supervisors of the various counties in the State. To centralize this power by placing the fixing of rates for every distributor of water in the entire State in the hands of one Board will so load that Board with labor that in the very nature of things these rates cannot be fixed so wisely, sensibly and justly as they are now fixed by the respective boards whose present duty it is.

Sixth. Regulate the manner in which water is to be supplied to persons entitled thereto; whether continuously, or at stated intervals, or under both systems.

This is so far an interference with those whose rights are already established, either by contract, by prescription or by priority, that it will have an unsettling and injurious effect.

Seventh. To appoint deputy engineers at the request of any person, company or corporation supplying water for sale, rental or distribution, to regulate such supply and use, and the manner thereof, the compensation of such deputy to be paid by such person, company or corporation; such deputy to be under the direction of said Board of Engineers and employed only so long as needed and requested, as aforesaid, and not to be an officer or agent of such person, company or corporation.

The difficulties which this provision would lead to, would appear in the pressure brought by different persons, companies or corporations with conflicting rights, for the appointment of these deputies; the improbability of securing from such deputy, impartial and just action between contending parties, one of whom pays the compensation of the deputy who is to determine the rights of all.

Eighth. Authorize some member of said Board of Engineers or other officer appointed for that purpose, to determine, subject to review by said Board of Engineers, what constitutes surplus water as mentioned in this act.

The objection to this is the objeetion whieh applies to all the provisions of this section, to wit, that it constitutes a Board having judicial powers which may be delegated to its appointee, and which power may be exercised to try and determine water rights long since vested and established and adjudicated by the courts.

Ninth. Make such orders as are deemed necessary from time to time to carry out the provision of this act, according to their true intent, or to meet any cases whieh arise and for which no provision is made in this act, and further, make any regulations which are considered necessary to give the provisions of this aet full effect.

It seems to me that this paragraph of section 7 intends to confer on the Board of Engineers the power, legislative in its nature, "to meet any cases which arise, and for which no provision is made in this act." There is hardly any limit to the possibilities of this provision, or to the injustice, injury and confusion which would follow if the Legislature should enact it, and the courts uphold it.

Tenth. To perform all the duties and exercise the powers now imposed and conferred upon the Commissioner of Public Works and the Auditing Board of the Commissioner of Public Works.

This provision will add to the duties of the Board of Engineers, expressly set forth in the proposed bill, the further duty of examining lands subject to inundation and overflow by flood waters, and of the waters causing and making such inundation and overflow, and preparing plans and estimates of the cost of works to regulate and control such flood waters whenever the Board shall be directed so to do by the Governor.

It will be seen that the powers of this Board of Engineers are so broad as to afford room for the employment of an army of officials and employes, whose compensation is to be fixed by the Board, and paid by the State. It further seems that it is proposed to give this Board power to interfere with all industries of the State which are based upon the use of water for power, for irrigation, for domestic purposes, or upon the established and vested rights of riparian proprietorship, or upon the eontrol and management of flood waters or upon adequate protection of lands from inundation, or upon the drainage of lands naturally wet or submerged by the debris from hydraulic mines, or upon the existence and condition of river channels.

Eleventh. Seetion 8 of the proposed act provides that:

"Any companies already formed to promote irrigation or to sell, rent or distribute water to the public, shall be subject to all the provisions of this act relating to such companies.

This is announcement of the general purpose of the proposed act, whieh is to interfere with, and unsettle and confuse rights already vested, established and adjudicated.

The provisions above quoted from the proposed act seem to me so entirely opposed to what is reasonable, just and advantageous to the people of the State, and so contrary to that protection to existing and vested rights of property that are guaranteed by both the State and Federal Constitutions, that they would be overthrown by the courts. If any considerable part of these provisions should be sustained by the courts, they could not fail to give rise to long continued and expensive litigation, and for all the reasons which I have set forth, I believe that all persons interested in water and the use of water, and in any of the matters which the proposed act purports to place under the control of this Board of Engineers should earnestly oppose its enaetment by the Legislature.

## VIII. The Commission Bill in the Legislature.

It is believed that the foregoing contains all the important arguments made by the opponents of the Commission bill. Much of the discussion in the press and elsewhere was heated and too personal to be incorporated in this resume. Many things were alleged of the bill which were denied by its promoters, and owing to its length and detail the general public never got any idea of its character. Funds were raised in Southern California to fight it in the Legislature, and remonstrances, said to have been signed by several thousand persons, were presented to the Legislature. The bill was introduced in the Senate "by request" and apparently had no defenders in the Legislature. It was virtually abandoned by the Water and Forest Society, whieh feared to jeopardize other bills which it was promoting in the Legislature, was reported unfavorably by the Committee, and the report was adopted.

# IX. Earlier Recommendations.

In the year 1900 an investigation of the condition of water rights and water laws of California was undertaken by the United States Department of Agriculture at the request of a large number of Californians. The investigation was under the supervision of Professor Elwood Mead and cost some $25,000, more or less, about one-half of which was contributed by citizens of California. The results were published in Bulletin No. 100 of the Office of Experiment Stations and at the close of their work the experts and agents who had done the field work made the following recommendations as to a law which should be enacted by the California Legislature. Two of those who signed the report were subsequently members of the Water and Forest Society Commission. It will be voted that the recommendations of these experts, including some of the best known irrigation experts in the State, include all the essential features of the bill subsequently prepared by the Water and Forest Commission and rejected by the Legislature. This was before the passage of the National irrigation act.

## Basis of a Model Water Law.

From Bulletin No. 100, Page 397:

The report on irrigation investigations conducted by the Department of Agriculture and the Geological Survey in the California field in 1900, concludes with the following statements and recommendations:

Each expert in charge of an investigation has based his conclusions on the facts gathered in his particular field, and these conclusions are made a part of his individual report.

After the work was completed a conference of the experts was held at Berkeley, which showed that there was a practical unanimity of opinion among them regarding the more important measures necessary to develop to the fullest extent the agricultural possibilities of California. The conclusions they reached and their recommendations are given below.

It is the duty of the State:

(1) To fix the priority and limitations of every existing right to water, whether based on the ownership of riparian lands or on beneficial use.

(2) To determine the volume of unused or unappropriated waters.

(3) To declare unappropriated water State property and define the procedure whereby rights thereto may be acquired.

(4) To exercise adequate supervision and control when new appropriations are sought.

(5) To provide an office in which shall be kept a complete record of each perfected right, of each application and of each permit for a new diversion or use.

(6) To divide the State into administrative divisions and districts based on drainage lines.

(7) To provide an efficient administrative system with proper officers for the distribution of the water supply among those entitled to its use.

For the accomplishment of these purposes they recommend the following legislation:

## Board of Control.

(1) There should be created in California a special tribunal entitled "The Board of Control of Water," which shall have the determination of existing water rights and the control of the establishment of rights hereafter. This Board shall consist of one attorney, one business man and one civil engineer, all of good character and established reputation, to be selected and appointed by the Supreme Court of the State, and to hold office until removed for cause. The salary of the members of this Board should not be less than $3000 per annum each, and they should be allowed a clerk at a salary of $1800 per annum, to be appointed by the Board.

## State Hydraulic Engineer.

(2) There should be an executive officer of the Board, appointed by them, who should be a competent, experienced civil engineer, and who should have exclusive control over the administration of the water supply and its distribution to the parties having legally established rights to its use. The title of this officer should be "State Hydraulic Engineer."

## Unappropriated Waters Declared Public Property.

(3) The statutes of California should declare that all unappropriated waters not utilized for irrigation at the date of the passage of the act are public property.

### Limitation on Rights.

(4) All irrigation rights to be established hereafter shall be attached to the land for which the appropriation is made. The volume permitted to be appropriated should in all cases be limited to the actual necessities of economical use, to be determined from time to time by the State Hydraulic Engineer. Priority of use should give the better right as between parties using water for the same purpose.

### Domestic Use to Be a Preferred Right.

(5) Domestic use of water should take precedence over all other uses.

### All Rights to Be Based on Use.

(6) Beneficial use should determine the extent of every acquired right to water as well as of the riparian owners as of the appropriators. No riparian owner who has not made beneficial use of his water should acquire title to water under any doctrine as against those who have put water to a beneficial use.

### Board of Control to Fix Water Rates.

(7) The Board of Water Control should be vested with the authority to fix water rates now possessed by county supervisors, city councils or boards of trustees of municipalities.

(8) The right of eminent domain should be given to users and conveyors of water for irrigation.

### Governor to Appoint a Commission to Frame Laws.

(9) The Governor of the State should be asked to appoint an expert nonpartisan commission to frame an irrigation law or laws, which should fit and adapt the foregoing recommendations to the State Constitution and present the results in the form that they should be passed by the State Legislature.

The agents and experts further recommended—

### State Aid to Districts.

(10) State aid should be extended—

(a) To the extent of projecting and supervising works whenever constructed for an organized district. Districts, in the case of storage works, should include all irrigation works and lands that will be benefited by the water stored.

(b) To the extent of actual construction of works under a proper regulation for the recovery of its outlay in whole or in part from the lands benefited in proportion to the benefits conferred.

### National Aid.

(11) The work of the National Government in promoting irrigation development, in addition to the improvement of navigation, should also include the construction of storage reservoirs for impounding water to be used on the public lands; a continuation of the hydrographic and topographic work of the Geological Survey, and of the work of the Irrigation Investigation of the Department of Agriculture for the promotion of improved economic methods of irrigation.

(12) There shall be entire harmony and co-operation between the State and National Governments, looking to the fullest possible use of the waters of the State for irrigation, particularly in all cases where the diversion of water from streams may tend to reduce their navigability. To accomplish this purpose the National Government should take measures for canalizing these rivers, thus giving maximum navigability with minimum use of water. A wise adjustment and determination of the volume that can be safely taken from the tributaries of navigable streams for irrigation without interfering with slack water navigation should be presented to the National Government as an urgent necessity.

### Forest Management.

(13) Both Federal and State aid should extend to forest preservation. Practically all timber land should be withdrawn from sale, and timber should be cut under regulation at fixed charges for stumpage. Revenue from the sale of timber should be applied to betterments and extensions of the forest areas and to the control and management of the forests.

(14) National aid in constructing storage works to be chiefly used for private lands should be discouraged, although cases might occur where reservoirs built to

serve public lands would also be serviceable to adjacent lands in private ownership that had been once owned by the United States. In such cases the use of reservoired water for private lands should not be prohibited.

## Reclamation for Public Lands.

(15) Federal aid, for the present, should not be extended to the actual construction of works, except when the lands, or a large portion of the lands, to be benefited belong to the public domain. The price at which the land is sold should be increased by an amount sufficient to reimburse the Government for its outlay; or the sale can be supplemented by a rate charge or tax for a series of years such that ultimately the funds advanced in the construction will, in the main at least, be returned to the National treasury. No works should be constructed unless the benefits conferred will exceed the cost.

Recommended by:

WM. E. SMYTHE,
MARSDEN MANSON,
J. M. WILSON,
FRANK SOULE,
C. E. GRUNSKY,
C. D. MARX,
E. M. BOGGS,
J. D. SCHUYLER,
Agents and Experts in Charge.

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# PROGRESS REPORTS OF CLUB

TRANSACTIONS OF THE

COMMONWEALTH CLUB
OF CALIFORNIA

VOL. I SAN FRANCISCO, JANUARY 20, 1905 No. 7

## Officers of the Club

| | |
|---|---|
| President | H. WEINSTOCK |
| Vice-President | EDWARD F. ADAMS |
| Secretary | FREDERIC BURK |
| Treasurer | JOHN P. YOUNG |
| Governors | GEORGE W. DICKIE<br>RUFUS P. JENNINGS<br>C. H. BENTLEY |

The Governors, with the President, Vice-President, Secretary and Treasurer, constitute the Board of Governors.

All communications to the Secretary should be addressed to 25 New Montgomery Street, San Francisco.

## Chairmen of Sections

| | |
|---|---|
| Commercial Interests | GEO. W. DICKIE |
| Finance | C. C. PLEHN |
| Social Welfare | E. A. WALCOTT |
| Education | D. S. SNEDDEN |
| Civil Service | JAMES D. PHELAN |
| Public Laws | EDWARD F. ADAMS |
| Transportation | S. J. McLEAN |

## Annual Report of President H. Weinstock.

San Francisco, December 14, 1904.

To the Members of the Commonwealth Club.

Gentlemen:—The present administration having started out with the aim of doubling the club membership during the current year, begs to announce the following results:

| | |
|---|---|
| Members on roll December 1, 1903 | 48 |
| Additions during the year | 57 |
| | 105 |
| Deaths and resignations | 11 |
| | 94 |
| Applications on file | 17 |

Should these applications be acted upon favorably and the applicants qualify, all of which is most probable, the Club will have a membership of one hundred and eleven—more than double that of a year ago.

Financially, the Club has also made progress, as indicated by the Treasurer's report, which showed a cash balance on hand December 9, 1903, of $593.75, and a balance on hand December 1, 1904, of $1559.51.

While memberships and finances are important; because, without these, little can be accomplished; the things of most importance are the works achieved by the Club.

It has been well said that the educator must have infinite patience. The missionary who would go forth expecting to revolutionize conditions over night or to carry things before him with the sweep of the hand, would be doomed to keen and bitter disappointment. The body politic is slow to make radical changes, and it is well that it is slow to make such changes or we should find ourselves living under most unstable conditions. The purpose of the Club is to seek out existing evils in the fabric of our commonwealth, to point out these evils to our fellow citizens, and to use our best endeavors to have them corrected.

The comparatively brief existeuce of the Club has made manifest that, at best, all this is a slow and tedious task. It has found that, despite the fact that its members are men who have been successful in their various walks of life, carefully chosen, because of their intelligence, character and public spirit, that there are, at times, wide differences of opinion among them as to what coustitutes a public evil; and that it often demands much investigatiou and discussion on the part of experts before the Club membership can reach a concensus of opinion as to the nature of the alleged evil. It has further been found that after such an opinion is formed, that there are still wider differences as to remedies and the correct application of proposed remedies.

Thus, the Club learned that before it can hope to educate the public on mooted State questions, it nas the task before of first educating its own members. To do all tbis wisely and well, demands the amplest time. The most aggressive and energetic members have been brought to realize that above all things else patience, infinite patience, will have to be exercised before any radical results can be hoped for in the way of positive and definite club achievements. Meanwhile, important, very important work is being done by the Club. For the first time in the history of the State, so far as my knowledge goes, a body of unselfish men, many of them authorities and experts in their respective spheres, have come together and are giving of their time, their thought and their energies, to the gathering of most valuable data and reliable information on great public questions, and, at their own expense, are placing these valuable facts into permanent form for the widest distribution. If the Commonwealth Club did no more than this one thing, the publication of its monthly Bulletins, packed as they are with most useful and meatty statements and reliable references, it would be rendering the State a most helpful and valuable service, unlike any other hitherto rendered by any other organizatiou. That the work of the club is being appreciated is made evident by the growing demand for its literature which is making itself heard and being called for from most unexpected quarters. Its publications on the labor question, civil service, reclamation, taxation, penology, the water, and other questions, promise to become valuable additions to the literature on these grave State issues and to do their fullest share in spreading knowledge and reliable information on these public problems. The Club, however, does not mean to content itself with the mere spreading of dependable information, however valuable such service may prove. It means, also at the proper time, to do its share to influence corrective and remedial legislation. One hundred or more men, representing a goodly share of brains, character and public spirit, united for unselfish public good, should be able to achieve some results.

The present administration has earnestly striven to maintain for the organization the high standard in mind by the founders of the Club. The hope is expressed that this standard of thoughtful, helpful, public service, may be advanced still further, so that to be known as a member of the Commonwealth Club will, in time, mean to be distinguished as a citizen who is a sincere lover of his State; who is ever seeking her welfare and doing his fullest share to earnestly further her interests.

May I be pardoned if, in conclusion, I avail myself of this opportunity to sincerely thank the members for the compliment conveyed in electing me one year ago for a second term to the presidency, and my keen regret, at this hour, is that after all, I have been able to accomplish with the Club and for the Club so much less than a more gifted or more energetic leader might have achieved. For whatever has been done, I am deeply indebted to the aid and the support rendered me by the members generally and to the earnest, thoughtful and kindly assistance of the admirable Board of Governors and heads of sections with whom I was fortunate enough to surround myself and to whom I desire, at this time, to publicly express my thanks.

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## Report of Secretary.

SAN FRANCISCO, December 14, 1904.

During the past year the Commonwealth Club of California has held twelve regular meetings and one special meeting. The attendance has averaged forty for each meeting. At three meetings the attendance has exceeded fifty. The combined attendance has been 497.

Ten topics have been brought before the Club for consideration, as follows: Civil Service, Taxation Reforms, Publicity in Muncipal Affairs, the San Francisco Port and Harbor, Reclamation of River Swamp Lands, Irrigation Rights, California's Penology Problems, the Referendum, exemption from poll tax as a means of encouraging fuller exercise of the suffrage, and a proposal to create a municipal league to furnish accurate information concerning candidates for public office. All of these, except the last two, have been subject of carefully prepared papers and reports submitted to the Club. The phases of the problems in these papers as presented to the Club have reached the stage of final disposal in the case of three—Civil Service, Swamp Land Reclamation and Penology. Consideration of the remaining seven is yet pending. Three Bulletins of Transactions, one each upon the following topics, have been published and distributed: No. 2, Civil Service; No. 3, Reforms in Taxation; No. 4, Reclamation of the Swamp Lands of the Sacramento and Lower San Joaquin Rivers. (Bulletin No. 1 of the previous year contains papers upon the Purpose of the Club, by E. F. Adams, Relations of Employer and Employed, by George Dickie, Unionism, by E. F. Adams, and Publicity in Municipal Affairs, by John P. Young.) Bulletins are partially ready for publication upon the topics of Irrigation, California Problems in Penology, the Referendum, and the Port and Harbor of San Francisco.

### CIVIL SERVICE.

This topic had been opened at the November meeting of the previous year, when Mr. C. A. Murdock, ex-Civil Service Commissioner of San Francisco, and Mr. E. F. Moran, Secretary of the San Francisco Civil Service Commission, had presented papers. Both these papers, the former dealing largely with the experience of the Federal Government, and the latter based on the data of experience in the local municipality, had very strongly endorsed the existing system of reforms as correctives and antidotes to the evils of the spoils system. The discussion which followed the papers was in entire accordance with them.

Mr. John P. Young, feeling that only the affirmative features of the system had been presented, and that there remained certain negative aspects necessary

in any complete presentation of the subject, prepared, at the request of the Section on Social Welfare, a paper pointing out certain bureaucratic tendencies, more or less inherent in the Civil Service reform systems. This paper was read at the January meeting, 1904. The virtues and advantages of appointment by merit presented by the previous papers were not disputed, but it was pointed out that a permanent Civil Service, unless protected by restrictive measures, tended to become a bureaucracy working for the interests, influence and compensation of its own members, frequently to the detriment and impairment of the public service.

The subject was discussed at length by ex-Civil Service Commissioners John E. Quinn and C. A. Murdock, James D. Phelan, C. E. Grunsky, Edward Berwick, E. F. Adams, H. U. Brandenstein, George W. Dickie, B. I. Wheeler, and others. In conclusion, the following resolution was adopted unanimously:

Resolved, That the Club hereby expresses its approval and support of the merit system of appointment to the civil service.

A committee of five, under the chairmanship of James D. Phelan, was appointed to consider and report upon the proper measures to improve the administration of the San Francisco Civil Service.

At the meeting in March following, this committee made an extended report, pointing out the weaknesses in the charter which made it possible to defeat the intent of the Civil Service provisions of this instrument. The committee made two recommendations in conclusion:

I. That county officers should be brought under civil service rules as required by the Charter.

II. The tenure of office of clerks and subordinates, as provided by the Charter, should be protected by an amendment to the Constitution.

The first of these recommendations was adopted without discussion. The second recommendation developed a debate with two clearly opposed points of view. The emphasis in the one was placed upon the use of Civil Service regulations as a protection to the employees in the tenure of their office. The emphasis in the other was placed upon the use of Civil Service reforms as protection of the government against the spoils system and the protection of the employee was regarded merely as an incident.

After considerable debate further discussion was postponed until the April meeting. At this latter meeting Mr. A. W. Cooley, a member of the United States Civil Service Commission, and Mr. E. H. Goodwin, Secretary of the National Association of Civil Service Reform Leagues, were present as club guests, and addressed the Club at some length upon those features, which experience, in the Federal service, State and municipal governments, seemed to make essential. Both were very emphatic in their position that all Civil Service regulations must be enacted in the spirit securing efficient service and must avoid bureaucratic tendencies of protecting the tenure of office of the employee; at best the protection of the employee is merely a fortunate incident. Experience has shown that all attempts to protect employees, by rights of trial or reference to appellate tribunals, defeat the efficiency and discipline of the service. Heads of departments could be trusted with the absolute power of removal, provided they did not have the power of appointment. If the Civil Service examinations were the only gateway to position, under direction of a Commission, then the head of a department could be given power of removal, without appeal from his decision, provided he filed a written statement giving his reasons, these reasons affecting the efficiency of the service. After some discussion by Messrs. James D. Phelan, William Denman, Franklin K. Lane, E. F. Adams, and other members of the Club and guests, the committee withdrew their second recommendation, inasmuch as the matter was then before the courts for decision.

No further measures pertaining to Civil Service were introduced until the August meeting, when the Section upon Social Welfare reported a draft of a pro-

posed change in the Constitution, giving power to the City of San Francisco to provide Civil Service rules in the appointment of county officers and their deputies; also for clerks and employes in State offices and institutions, excepting chief clerks, all educational officers and a few others specified.

This report was finally discussed at the December meeting. The question whether or not the tenure of office of employees should be protected by privileges of appeal from this order of dismissal by heads of departments was decided in the negative by an amendment to the report explicitly declaring:

Heads of departments may remove persons employed under them; the removal shall be by notification and, if requested by the party removed, the reasons shall be stated in writing.

(Bulletin No. 2, issued January, 1904, contains the papers by Messrs. Murdock, Moran and Young, and the discussions up to that date.)

## PUBLICITY IN MUNICIPAL AFFAIRS.

At the December meeting, 1903, Mr. John P. Young presented a paper upon "Publicity in Municipal Affairs." The writer pointed out that the fundamental principle in securing the honest and economical expenditure of public funds is publicity. To this end, he suggested the publication, by the municipality, of a weekly bulletin which should show, in clearly expressed items, the municipal expenditures of the preceding week. It was calculated that the expense of the publication of such a bulletin would not materially exceed the cost of the present annual report, which neither in time of publication nor in extent of distribution, serves the purpose of publicity.

The paper was referred to the Section on Public Finance. The members of the Section conferred with various municipal officers and at the March meeting reported that the cost of a weekly bulletin containing 5000 entries in ninety-six pages would be about $12,000 per annum. It was recommended that the Board of Supervisors be asked, for the present, to publish a monthly bulletin at a cost not to exceed $6000 per annum, including cost of clerk hire for preparing the material, and such a publication should show:

1. The cost of running each department and each principal subdivision thereof.
2. The sums received from fees and turned into each department and principal subdivision.
3. That expenditures be segregated as follows: regular salaries, salaries paid for temporary employees; wages (manual labor only, excluding janitor service) and material.
4. The cost of unusual or special services, such as cleansing Chinatown or repaving an important street, or a new park driveway, to be made clear.
5. All sources of income should be segregated.

The committee also recommended that a special committee of five be appointed to present the subject to the Supervisors and to secure the co-operation of other civic bodies in urging the plan and generally to work for its adoption. The recommendations were adopted. The committee has not since made report.

(Bulletin No. 1, issued November 15, 1903, contains Mr. Young's paper.)

## SWAMP LAND RECLAMATION.

At the June meeting Mr. E. F. Adams read by title a paper, previously printed, entitled, "Reclamation of Swamp Lands of the Sacramento and Lower San Joaquin Rivers." The paper was referred to the Section upon Commercial Interests. Reports from the Section upon this paper occupied most of the regular sessions of the June, July, August and September meetings, and the discussions were finally completed at a special meeting held September 28th. Mr. Adams, in his paper, did not discuss the engineering phases of the problem, but, commencing with the earliest legislative and court decisions, stating the various policies which have been more or less employed to reclaim the State's vast areas of overflowed lands. The paper concluded with recommendations which history and experience, com-

bined with consideration of the future development of the State, seemed, to the writer, to justify. These recommendations favored the assumption of control by the State and Federal governments of all swamp lands in one reclamation district, with power to carry out systematically a complete plan of reclamation, together with a scheme of financing by which the State and Federal governments, conjointly, should bear the expense of rectifying and deepening the river channels, primarily in the interests of navigation; reclamation costs should be borne by the lands affected, under a bonded system, in which the credit of the State should be pledged as security.

Reports of the Section upon Commercial Interests, in substantial agreement, were threshed out by discussions at subsequent meetings. At the July meeting Colonel W. H. Heuer, United States Engineer in Charge of River and Harbor Improvements, was present as the Club's guest, and contributed important facts in the history of river improvement; and at the August meeting, the Club entertained as its guests Major H. M. Chittenden and H. B. Richardson, eminent engineers of the South, who had come to this State to give expert advice to the State officials concerning our river and swamp land problem; also F. D. Ryan, State Commissioner of Public Works; ex-State Engineer William Hammond Hall, and M. A. Nurse, Chief Engineer of the Commission of Public Works.

Among those who took most active part in the various discussions upon this subject were: E. F. Adams, George W. Dickie, Fairfax Wheelan, George W. Reed, A. R. Sprague, C. E. Grunsky, W. P. Lawlor, William H. Mills, Andrea Sbarboro, William Denman, E. A. Walcott, C. H. Bentley, Oscar Cushing, Andrew M. Davis R. P. Jennings, James Denman, S. C. Denson and Marsden Manson.

At the special meeting of September the following report was adopted by unanimous vote of those present:

## I. ORGANIZATION.

1. In order that the reclamation of the swamp and overflowed lands of the Sacramento and lower San Joaquin rivers may be properly accomplished, and in order that the State may fulfill its obligation to reclaim these lands, the State should assume entire control of the reclamation, in formal and permanent co-operation, under such organization as may be deemed best, with the Federal Government, which has charge of the interests of navigation.

2. The organization should be absolutely and by the most drastic legislation removed from any and all forms of political influence.

3. The engineering work necessary to carry out the extensive reclamation works contemplated should be placed in control of a Board of Engineers of the highest standing in their profession, who, in conjunction with the Government Engineers in charge of the navigable river part of the work, should have full control until the whole undertaking is complete. The compensation should be such as would attract men of known ability and experience in works of this character.

4. The existing reclamation districts should be continued in existence until one after another they cease to be necessary when they could dissolve under existing laws.

## II. THE MAIN DRAINAGE CHANNELS.

5. For the purpose of providing the Main Channels, into which the flood waters may be drained, the State should levy a tax, and aid from the United States should be secured, with the understanding that the object in the expenditure of this fund shall be the rectification and deepening of the channels of the rivers and such disposal of the material removed as shall involve no danger to the interests of navigation in navigable waters elsewhere.

## III. THE RECLAMATION AND PROTECTION OF LAND.

6. The State should erect all the swamp and overflowed lands on the Sacramento and lower San Joaquin rivers into one assessment district for reclamation purposes. The assessment should be levied in proportion to the valuation of the lands in such drainage district, to be determined under the general laws of taxation of the State of California.

7. That we favor a constitutional amendment, if necessary, which will enable the State to issue bonds for the necessary cost of such reclamation; such bonds to constitute a lien upon the lands in such reclamation work, the principal and

interest of said bonds to be paid out of the proceeds of a special tax for this purpose, levied upon the lands in said district, in accordance with Section 6 hereof.

8. After the completion of the plan of reclamation, the cost of maintenance from year to year should be assessed upon the lands of the reclamation district in proportion to their value, as provided in Section 6 hereof.

(Bulletin No. 4, a pamphlet of 48 pages, issued October 15, 1904, contains Mr. Adams' paper, a digest of the discussions, and the resolutions finally adopted.)

## REFORMS IN TAXATION.

Professor C. C. Plehn opened the subject at the February meeting by a paper entitled "Reform in Taxation." He reviewed the fundamental defects of the California taxation system—the failure of the personal property tax system by reason of the inability to assess it, the inadequacy of the general property tax by reason of the relatively large increase, in recent years, of the invisible and intangible forms of wealth, and the injustice of requiring the general property tax to be a source of both State and local assessments. The experiences of other countries and other States where reforms of the tax systems have been tried were reviewed and certain tentative conclusions were reached.

The paper was referred to the Section on Public Finance, which at the May meeting made the following recommendations:

First: The abandonment of the attempt to tax all forms of property for the support of each and all departments of government, by a single and uniform system.

Secondly: In particular, the abandonment of all attempts to tax intangible personal property, credits and securities, as such, because the tax-paying capacity represented by such can be better reached in other ways.

Thirdly: In particular and further, the abandonment of the attempt to support both the State and the local governments from taxes laid in the same sources of revenue.

These three propositions really involve the rest.

Fourth: Certain taxes or sources of income should be set aside for the use of the State and others for the cities. Presumably to the cities should be assigned those taxes which fall on those interests which benefit peculiarly by municipal activities. In this category are primarily: Real estate and the franchises granted by the city governments to public service corporations; also industries which utilize extensively the public streets and possibly tangible personality as well. It may be that the local governments should be allowed a limited option in the determination of their sources.

In the discussion which followed the following took important part: C. C. Plehn, A. C. Miller, H. A. Millis, Washington Dodge, R. J. Taussig, W. H. Mills, William Denman, A. R. Sprague, Edward Berwick and E. F. Adams.

It was finally adopted as the sense of the Club that the proposals as stated in Proposition I and particularized in Propositions II and III meet the approval of the Club as the statements of correct theory, and the action indicated should be taken in this State whenever other just and adequate methods of raising State and local revenue applicable to our situation can be devised.

Section IV was left over for further consideration.

(Bulletin No. 3, issued June 15, 1904, contains a digest of Professor Plehn's paper and the Club's discussions to that date.)

## FINANCE AND MEMBERSHIP.

Since the presentation of the President's annual report at the December meeting, several members have been added, and the total number is now 117. The finances of the Club are in excellent condition, and more money can be devoted to the distribution of literature. On the 25th of January the Treasurer reported funds on hand $2,059.13, of which amount $1,538.69 is deposited to the credit of the Club in the Italian-American Bank, and is drawing interest.

# Constitution.

## NAME.

Section 1. The name of this organization shall be the Commonwealth Club.

## OBJECT.

Sec. 2. Its object shall be to investigate and discuss public questions and to aid in their solution.

## MEMBERSHIP.

Sec. 3. The active members shall be those who pay the full initiation fee and regular dues. The active members only shall vote on questions affecting the property of the Club. Upon the recommendation of the Board of Governors the Club may elect as associate members persons whose assistance is desired in the work of the Club. Associate members shall pay no initiation fee and one-third of the regular dues. The Club may elect such honary members as it deems best, who shall pay neither initiation fees nor dues. All names proposed for active, associate or honorary membership shall first be submitted to the Board of Governors, through the Secretary. The Board of Governors shall investigate the fitness of the proposed members and when action is favorable, the Secretary shall mail a list of the candidates to all the members of the Club, requesting objections to any candidate, if any such objections exist. If no objections shall be received within two weeks from the date of mailing, the candidates shall be considered elected, and the Secretary shall notify them of their election. If objection to any be made, the Secretary shall report the same to the Board of Governors, who shall take such action as is deemed best.

## OFFICERS.

Sec. 4. The officers of the Club shall be a President, Vice-President, Secretary, Treasurer and three other members, who shall constitute the Board of Governors. The Board of Governors may designate a bank to act as Treasurer. The President shall be elected at the annual meeting and shall hold office until the next succeeding annual meeting. The President shall appoint the other officers of the Club, who shall hold office until their successors are duly qualified. The officers shall perform the duties appropriate to their respective positions.

## BOARD OF GOVERNORS.

Sec. 5. The Board of Governors shall have direction of all the business affairs of the Club, with full power to act except in the buying or selling of real property. It shall be the duty of the Board to make a statement at each regular meeting of the Club of all business transacted by it during the preceeding month and to report monthly upon the finances of the Club.

## MEETINGS.

Sec. 6. The Club shall hold at least one regular meeting in each month on a day fixed by the Club. The regular meeting in December shall be the annual meeting. No business affecting the Club's affairs shall be transacted except at regular or adjourned meetings, unless due notice of such business be included in the call for a special meeting. Special meetings may be called by the President or Board of Governors.

## QUORUM AND VOTING.

Sec. 7. A quorum for transacting business shall be fifteen (15) members entitled to vote. Questions involving the purchase or sale of real estate or authorizing the expenditure of more than $100 shall be decided by yea and nay vote, which shall be recorded in the journal.

FEES AND DUES.

Sec. 8. The iuitiation fee sball be $10. The dues shall be $1 per month. Any member six months in arrears on payments due the Club may be dropped from the roll at the discretion of the Governors.

MISCELLANEOUS PROVISIONS.

Sec. 9. The Club may enact by-laws not inconsistent with this constitution by majority vote. No by-laws shall be adopted, repealed or amended except by resolution submitted in writing, which shall then lay over until the next regular meeting or a special meeting called for the purpose.

Sec. 10. The Club may at any time provide for limiting the number of members by resolution, which, having been offered at one regular meeting, shall be discussed previous to a vote at two succeeding meetings; provided that the limit for active members shall not be placed at a less number than one hundred.

Sec. 11. Amendments to this constitution must be submitted in writing at a regular meeting and referred to the Board of Governors, wbo shall include them in full in the notice of the next regular meeting with their recommendation thereou. The Club shall then vote by ayes and noes, and if two-thirds shall vote aye the amendment shall stand adopted. If it receive less than two-thirds of the votes it shall be lost. The ayes and noes shall be recorded in the journal, and members unable to be present may send their votes to tbe Secretary under seal, which shall be opened and read wben the name of the member is called.

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# Membership

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YOUNG, J. P., Managing Editor, San Francisco Chronicle.

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From time to time the Club publishes the papers read before it, and the discussions thereon under the title of the "Transactions" of the Club. So long as the editions last copies can be obtained by addressing the Secretary. The following are those published to date:

No. 1. The Commonwealth Club. Its origin, purposes and organization. This number also contains a paper on the Labor Problem, by George W. Dickie.

No. 2. Civil Service Number.

No. 3. Taxation Number.

No. 4. Swamp Land Reclamation.

No. 5. Direct Legislation for State Purposes.